Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1978

No. 78-898

NORVAL GOSS, ET AL.,
Appellants,

v.

EILEEN LOPEZ, ETC., ET AL.,
Appellees.

On Appeal from a Three-Judge
United States District Court
for the Southern District of Ohio,
Eastern Division

JURISDICTIONAL STATEMENT OF APPELLANTS NORVAL GOSS, JAMES FERGASON, JAMES FOSTER, JOHN MULHERIN, JOHN LILLE, THE COLUMBUS BOARD OF EDUCATION, VIRGINIA PRENTICE, THOMAS MOYER, MARILYN REDDEN, MARIE CASTLEMAN, DAVID HAMLAR, PAUL LANGDON, AND WATSON WALKER

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This appeal is from a final judgment rendered by the United States District Court for the Southern District of Ohio, Eastern Division, on September 17, 1973. The lower court declared Section 3313.66 of the Ohio Revised Code unconstitutional on its face because part of the statute authorized school principals to temporarily suspend students up to ten days without first having a hearing. The lower court concluded that the entire statute,

on its face, violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The lower court's judgment is set forth as Appendix A at page 18.

OPINION BELOW

The opinion filed by the Three-Judge District Court for the Southern District of Ohio, Eastern Division, has not yet been reported. That opinion is reprinted as Appendix B at page 20. The Notice of Appeal filed with the District Court is reprinted as Appendix C at page 67.

JURISDICTION

This action challenging the validity of Section 3313.66 of the Ohio Revised Code was heard by a three-judge court convened pursuant to 28 U.S.C. §2281. The judgment of the District Court was entered on September 17, 1973, and appellants filed their notice of appeal with the District Court on November 9, 1973.

The jurisdiction of this Court to review the judgment below by direct appeal is conferred by 28 U.S.C. §1253.

QUESTIONS PRESENTED

The questions presented by this appeal are:

1. Where the United States Supreme Court has concluded that the importance of education alone will not elevate education to the status of a fundamental right guaranteed either explicitly or implicitly by the Federal Constitution and where the lower court has recognized that education is not a property right, may a district court hold that education is a liberty protected by the Federal Constitution solely on the basis that it is important?
2. Is a statute, providing for a temporary limited suspension by a principal of a local school, which has not been determined to result in condemning students to suffer grievous loss subject to the procedural protections required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution?
3. Can a State create a liberty which is recognized as being subject to protection by the Fourteenth Amendment of the United States Constitution?

STATUTE INVOLVED

The statute challenged in this litigation is Section 3313.66 of the Ohio Revised Code which restricts the right of a principal to suspend a student to from one to ten days only.

> "§3313.66 Suspension or expulsion.
>
> The superintendent of schools of a city or exempted village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school for not more than ten days. Such superintendent or executive head may expel a pupil from school. Such superintendent, executive head, or principal shall within twenty-four hours after the time of expulsion or suspension, notify the parent or guardian of the child, and the clerk of the board of education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent, or guardian, or custodian of a pupil so expelled may appeal such action to the board of education at any meeting of the board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester."

STATEMENT OF THE CASE

Appellees brought the instant action as a class action claiming relief bottomed on 42 U.S.C. §1983, challenging

the validity of Section 3313.66 of the Ohio Revised Code, claiming that such statute and the regulations propounded by appellants violated the Due Process Clause to the Fourteenth Amendment of the United States Constitution. The action arose as a result of a series of short suspensions which occurred during the early part of the year 1971 occasioned by disruptive activity in several schools located within the Columbus, Ohio, school system. Appellees requested that a three-judge court be convened to hear the action.

Appellants on April 19, 1971, filed a memorandum contesting the necessity for a three-judge court and a motion to dismiss the complaint.

A three-judge court was ordered convened by an order of the Chief Judge of the United States Court of Appeals for the Sixth Circuit filed October 4, 1971.

On April 7, 1972, at the request of the Court, appellants filed an answer to the complaint, appellants indicating in their answer that they were not abandoning the motion to dismiss they had previously filed. In their answer, appellants did not admit that the lower court had jurisdiction. No specific ruling on appellants' motion to dismiss was ever made.

Both appellants and appellees entered into a series of stipulations relating to the case, which stipulations admitted the fact of the suspensions and attached various exhibits. Those stipulations were filed on October 10, 1972. On January 26, 1973, a stipulation was filed by which both appellants and appellees stipulated that the case could be decided on the pleadings, motions, stipulations and exhibits which had been filed.

At a conference called by the Court on May 25, 1973, appellants were advised that the Court could not decide the case on stipulations that had been filed and that a trial would be necessary.

On May 25, 1973, following the conference, appellants

filed a motion to strike all stipulations requesting that appellees be placed on their burden of proof.

The cause was tried on July 16, 1973, during which time several appellees testified as well as several psychologists and a guidance counselor. Objection was made to the testimony of the psychologist and the guidance counselor, and a motion to strike such testimony was also entered. Appellants presented evidence by way of deposition and through its Director of Pupil Personnel. While appellants never disputed the fact of the suspensions, evidence was presented demonstrating that each student either graduated on time or ahead of time and that the suspension did not result in a change in the point hour each involved student was receiving or the credits the student was earning. (pp. 42 and 44, infra).

Following the trial, appellants on July 17, 1973, filed a formal motion to dismiss the case for failure on the part of appellees to establish that they had been deprived of a federally protected right or right guaranteed by the Fourteenth Amendment to the United States Constitution and for failure on the part of appellees to establish by the proper degree of proof that Section 3313.66 of the Ohio Revised Code was unconstitutional. No specific ruling on this motion was ever made.

On August 31, 1973, appellees filed an amended complaint naming substituted parties defendant, and appellants at the request of the Court filed an answer on behalf of the substituted parties on September 12, 1973. The answer filed on September 12, 1973, did not admit the lower court had jurisdiction.

The Court on September 12, 1973, filed its opinion and order finding Section 3313.66 of the Ohio Revised Code to be unconstitutional on its face, while at the same time recognizing that a three-day suspension could be handed out in certain situations without first having a hearing. (p. 64, infra).

THE QUESTIONS ARE SUBSTANTIAL.

A. THE LOWER COURT OPINION IS IN DIRECT CONFLICT WITH THE DECISION OF THIS COURT IN *SAN ANTONIO INDEPENDENT SCHOOL DISTRICT V. DEMETRIO P. RODRIGUEZ, 36 L. ED. 2D 16 (1973).*

This Court, during the year 1973, in *San Antonio Independent School District v. Demetrio P. Rodriguez,* 36 L. Ed. 2d 16, 43, 44, (1973), specifically concluded that education is not one of the fundamental rights guaranteed either expressly or implicitly by the Federal Constitution. The Tenth Circuit in *Fleming v. Adams,* 377 F. 2d 975 (1967) had previously reached the same conclusion.

Faced with the principle that the Due Process Clause becomes applicable only in those situations where a fundamental interest protected by the Constitution is being violated, the lower court at bar concluded:

> "The question presented is whether the State created right to an education is a protected liberty under the Fourteenth Amendment's due process clause.
> ". . . .
> "Considering the importance of education in our society today, the Court HOLDS that the State created entitlement to an education is a liberty protected by the due process clause of the Fourteenth Amendment." (p. 60, infra).

Without relating education to any other protected activity, and without finding any other protected activity to be involved, the lower court in concluding as it did, put itself squarely in conflict with this Court's opinion in *San Antonio Independent School District v. Demetrio P. Rodriguez,* 36 L. Ed. 2d 16, 43, 44 (1973) wherein this Court specifically concluded that the importance of education will not alone elevate it to the status of a fundamental right protected by the Federal Constitution. In reaching that conclusion, the lower court specifically recognized that education is not a property right. (p. 56, infra). In other words, the lower court, not finding any other protected right implicated, not finding that education is a property right, concludes in a vacuum that the importance of education makes it a liberty protected by the Federal Constitution. Such analysis of the meaning of the term liberty as used in the Federal Constitution is historically incorrect and will not withstand scrutiny. Shattuck, *"The True Meaning of the Term 'Liberty' in those Clauses in the Federal and State Constitutions which Protect 'Life, Liberty and Property',"* 4 Harvard L. Rev. 365.

The conclusion that because an activity is important it is therefore protected by the Federal Constitution is unwarranted and far reaching. The lower court reaches this novel conclusion in an action which challenges the validity of a statute, (Section 3313.66 of the Ohio Revised Code), which restricts the right of a local school principal to suspend a pupil to from one to ten days. The lower court in essence concludes that the statute is unconstitutional on its face while at the same time recognizing that there are situations such as would warrant a suspension of up to three days without first having a hearing. (p. 64, infra). In so concluding that the statute is unconstitutional on its face, and not by reason of its operation, (p. 37, infra) the lower court in a secondary school setting is essentially saying that the difference between the three days it recognizes, and the permitted ten days set out in the statute, a difference of seven days, is sufficient to place the statute on its face in direct conflict with the Federal Constitution. The protected liberty thus found, is said to arise by virtue of its importance in society. If education and a system of education is primarily a matter of State concern and is a recognized legitimate State interest, then the con-

clusion reached by the lower court is neither necessary nor warranted and can be categorized as a decision whereby the lower court sought to implement its subjective values by intrusion into a legitimate State activity, namely local school management. *San Antonio Independent School District v. Demetrio P. Rodriguez,* 36 L. Ed. 2d 16, 44, 45 (1973); *Tinker v. Des Moines Community School District,* 393 U.S. 503, 526, 21 L. Ed. 2d 731, 749 (1969), dissenting opinion by Justice Harlan; and *Karr v. Schmidt,* 401 U.S. 1201, 1203, 27 L. Ed. 2d 797, 799, (1971). Such constitutional analysis where no other protected right is implicated, is not warranted.

Further, if the lower court has determined that a State may create a liberty such as is protected by the Due Process Clause, it has announced a proposition without historical or philosophical foundation. This Court has never held that a State may create liberty. Such a determination is at variance with historical foundations surrounding the term. As Justice Swayne in the *Slaughter-House* cases, 16 Wall. 36, 127, stated, "liberty is freedom from all restraints but such as are justly imposed by law." Liberty is associated with action and the right of a person to act does not emanate in the first instance from the State. Liberty, as that term has been used in the Federal and State Constitutions, is not something which is granted or created by the State. (Shattuck, "*The True Meaning of the Term 'Liberty' in those Clauses in the Federal and State Constitutions which Protect 'Life, Liberty and Property'*," 4 Harvard L. Rev. 365).

In addition, the determination that the State has created a right of liberty under the Federal Constitution is unsupported by any State court decisions. Education and the establishment of a system of education is primarily a matter of local concern. *Board of Regents v.*

Roth, 33 L. Ed. 2d 548, (1972), and *Perry v. Sinderman,* 33 L. Ed. 2nd 570, 581 (1972), concurring opinion of Justice Burger. When the system was established, the State did determine that restricting the right of a principal, as a part of such system, to temporarily suspend students for the short period of from one to ten days would provide the principal with a way to maintain discipline within the school and yet would not prevent or hinder full participation in the system by those students. In considering the challenge to the constitutionality of Section 3313.66 of the Ohio Revised Code, the lower court was certainly bound to presume the existence of such determination. *Alabama State Federation of Labor v. McAdory,* 325 U.S. 450, 465, 89 L. Ed. 1727, 1737 (1944). Ten days or the difference between three and ten days is not sufficient to overcome such presumption.

Serious constitutional questions do surround the lower court's determination that the statute is unconstitutional on its face, including one relating to whether or not the lower court interjected itself into an area where neither a fundamental nor State created interest was really involved. *Jackson v. Hepenstall,* 328 F. Supp. 1104, 1107 (1971); and *Negron v. Wallace,* 436 F. 2d 1139, 1141 (1971).

The determination by the lower court should receive further plenary consideration.

THE LOWER COURT OPINION IS CONTRARY TO THIS COURT'S PRONOUNCEMENT THAT PROCEDURAL DUE PROCESS RIGHTS ATTACH ONLY WHERE STATE ACTION CONDEMNS A PERSON TO SUFFER GRIEVOUS LOSS OF A SIGNIFICANT PROTECTED RIGHT.

B. A STATUTE WHICH RESTRICTS THE POWER OF A PRINCIPAL TO SUSPEND TO FROM ONE TO TEN DAYS IS NOT A STATUTE WHICH ON ITS FACE CONDEMNS A STUDENT TO SUFFER GRIEVOUS LOSS OF ANY SIGNIFICANT PROTECTED RIGHT.

This Court has in several recent cases stated and applied the concept that whether or not the procedural protections required by the Due Process Clause attach to a given situation depends not only on whether or not the interest is one within the contemplation of the terms "liberty" or "property", but also upon the extent to which an individual will be condemned to suffer grievous loss of the interest. *Joint Anti-Facist Refugee Committee v. McGrath*, 341 U.S. 123, 168, 71 S. Ct. 624, 647 (1951); *Hannah v. Larche*, 363 U.S. 420, 441-442 (1960); and *Morrissey v. Brewer*, 408 U.S. 471, 33 L. Ed. 2d 484, 494 (1972). The Circuit Courts are following the concept. *McNeil v. Butz*, 480 F. 2d 314, 318 (1973).

Not only does the lower court substantially ignore this Court's recent decision in *San Antonio Independent School District v. Demetrio P. Rodriguez*, 36 L. Ed. 2d 16 (1973), its opinion demonstrates neither recognition nor application of the "grievous loss" test. Involved in this case is a statute which restricts the authority of a principal to temporarily suspend a student, limiting such authority to a period of from one to ten days. The lower court first recognizes that situations exist warranting suspension up to three days without a hearing. Next the court, after finding that education is a protected liberty by virtue of its importance and without making any determination in regard to the "grievous loss" test, concludes that the difference in time between three days and ten days (seven days) is of sufficient magnitude to render the entire statute unconstitutional on its face as being violative of the Due Process Clause. Even were we

to recognize that education enjoys some protection under the Constitution, the interest of the State is not so inferior that a period of ten days or the difference in time between three days and ten days can be said to so sharply implicate any recognized interest in education as to support a conclusion that a person who is suspended for either period of time is condemned to suffer a grievous loss of such a recognized interest.

Even before this Court announced its decision in *San Antonio Independent School District v. Demetrio P. Rodriguez*, 36 L. Ed. 2d 16 (1973), concluding that education is not a fundamental right guaranteed either explicitly or implicitly by the Constitution, lower Federal District and Circuit Courts had concluded that a temporary ten day suspension given to a high school student was not violative of the Due Process Clause of the Fourteenth Amendment. *Baker v. Downey City Board of Education*, 307 F. Supp. 517 (1969); *Banks v. Board of Public Instruction of Dade County*, 314 F. Supp. 285 (a three-judge court); *Farrell v. Joel*, 437 F. 2d 160 (1971); *Hernandez v. School District Number One, Denver, Colo.*, 315 F. Supp. 289, 293 (1970); *Murray v. West Baton Rouge Parish School Board*, 472 F. 2d 438, 443 (1973); *Hatter v. Los Angeles City High School District*, 310 F. Supp. 1309 (1970) (involving an eight day sussuspension); *Rumler v. Board of School Trustees*, 327 F. Supp. 729, affirmed 437 F. 2d 953 (1971), *Dunn v. Tyler Independent School District*, 460 F. 2d 137 (1972); *Linwood v. Board of Ed., City of Peoria, Sch. Dist. No. 150*, Ill. 463 F. 2d 763 (1972) and *Black Coalition v. Portland School District No. 1*, 484 F. 2d 1040, 1044 (1973), which recognized that short term temporary suspensions do not violate the Due Process requirements of the Fourteenth Amendment. If the true test today, as promulgated by this Court, is one of not only determining whether or not the interest is one within the concepts of liberty or property set out in the language of the Four-

teenth Amendment, but also one of determining to what extent a person is condemned to suffer grievous loss of that interest, then the lower court did not apply the test. If a sharply defined fundamental interest is not grievously implicated, how can it be concluded that a period of ten days or seven days is sufficient to place the entire statute, on its face, in direct conflict with the Due Process Clause of the Fourteenth Amendment?

Furthermore, the lower court's opinion ignores the Circuit and District Court decisions cited herein which hold that temporary pupil suspensions, including ten day suspensions, do not violate the Due Process Clause of the Fourteenth Amendment. The lower court could not have reached the conclusion it did with respect to the entire statute had it given any credence to those decisions. Instead the lower court transposes those protections which have been previously held to surround the expulsion of a student into the area of temporary suspensions and concludes that the entire statute is unconstitutional on its face. If it can logically be said that a temporary suspension of from one to ten days can effectively be equated with expulsion, or that the difference between three days and ten days, namely, seven days can be equated with expulsion, then we are quickly approaching the conclusion that due process is a fixed procedure which must be accorded in every situation. It can not then be said that local school officials are being accorded the widest authority in maintaining discipline and order in the local schools. *Tinker v. Des Moines Community School Dist.*, 393 U.S. 503, 526, 21 L. Ed. 2d 731, 749, (1969) opinion of Justice Harlan; and *Karr v. Schmidt*, 401 U.S. 1201, 1203, 27 L. Ed. 797, 799 (1971). Further, if limited suspensions of from one to ten days are to be grouped and treated the same as expulsion, then, the requirement adhered to by this Court, of finding that a person is condemned to suffer grievous loss

of a protected interest before Due Process protections attach, becomes meaningless.

If it is recognized that local authorities possess wide authority in the field of local education, and if no other recognized protected right is directly involved, it does not logically follow that a statute which restricts the right of a principal to suspend to a maximum of ten days, is unconstitutional on its face. Is the lower court in drawing such fine distinctions applying a test of determining whether or not a person is condemned to suffer grievous loss of a protected interest or is the court making an unnecessary intrusion into a legitimate State activity? I submit that the drawing of such fine distinctions is a matter of legislative concern. *Communist Party v. Subversive Activities Control Board*, 367 U.S. 1, 72, 81 S. Ct. 1357, 1397 (1961).

In so concluding that the entire statute is unconstitutional on its face, the lower court's opinion is contrary to this Court's decisions and presents a substantial question relating to the proper application of those decisions.

THE LOWER COURT OPINION IS IN CONFLICT WITH CIRCUIT AND DISTRICT COURT DECISIONS WHICH HAVE CONCLUDED THAT THE IMPOSITION OF SHORT SUSPENSIONS DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

Until the lower court opinion in the instant case, both Circuit and District Courts recognized a distinction in secondary schools between the imposition of short temporary suspensions, long term suspensions, and expulsions. Specifically, it was recognized that a statute which authorized the imposition of a short term ten day suspension did not violate the Due Process Clause of the Fourteenth Amendment. *Banks v. Board of Public Instruction of Dade County*, 314 F. Supp. 285 (1970) (a three-judge

court). Other district courts either determined that a suspension of ten days fell into the category of being a mild sanction or recognized that short suspensions were not to be treated the same as long term suspensions or expulsions. *Baker v. Downey City Board of Education*, 307 F. Supp. 517 (1969); *Hatter v. Los Angeles City High School District*, 310 F. Supp. 1309 (1970); *Hernandes v. School District Number One, Denver, Colo.*, 315 F. Supp. 284 (1970), and *Rumler v. Board of School Trustees;* 327 F. Supp. 729, affirmed 437 F. 2d 1953 (1971).

The Circuit Courts have followed a similar pattern. *Farrell v. Joel*, 437 F. 2d 160 (1971); *Dunn v. Tyler Independent School District*, 460 F. 2d 137, 144, 145, (1972); *Linwood v. Board of Ed. City of Peoria, Sch. Dist. No. 150*, Ill. 463 F. 2d 763, 768, 769 (1972); *Murray v. West Baton Rouge Parish School Board*, 472 F. 2d 438 (1973); and *Black Coalition v. Portland School District No. 1*, 484 F. 2d 1040, 1044 (1973). The lower court decision herein is in direct conflict with those decisions, and that conflict should be resolved. Particularly does this conflict become more apparent when it is realized that the lower court really makes the decision it does on the basis of seven days. While giving recognition to the fact that three days suspensions can be imposed in certain situations without a hearing, the District Court turns and concludes that a period of seven additional days is sufficient to place the entire statute in direct conflict with the Federal Constitution as a matter of law. The interest of the state in discipline within the education system it has established is not so inferior as to command such a constitutional result. *Cook v. Carlson*, 364 F. Supp. 24 (1973). It is illogical to conclude that the liberty found to exist by the lower court is not

sharply implicated where only three days is involved but that it becomes sharply implicated where seven additional days or any part thereof is added. The Federal Constitution does not command such distinctions. Certainly, in light of this Court's holdings in *Hannah v. Larche*, 363 U.S. 420 (1960); *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Board of Regents v. Roth*, 33 L. Ed. 2d 548 (1972), all to the effect that the Due Process Clause only attaches in those situations where the individual is condemned to suffer a grievous loss of a protected right, a distinction does exist and should continue to exist between suspensions and expulsions. They cannot and should not be viewed exactly the same. A period of time involving seven additional days or any fraction thereof can not be viewed as condemning a student to suffer grievous loss of a protected right as a matter of law. The necessity to resolve this conflict is even more apparent in light of this Court's decision in *San Antonio Independent School District v. Demetrio P. Rodriguez*, 36 L. Ed. 2d 16, 43, 44 (1973).

If law and order in the classroom are to remain truly and primarily the responsibility of the educational system, the resolution of this conflict is important. *Madera v. Board of Education*, 386 F. 2d 778, 788-789, *cert. denied*, 390 U.S. 1028, 20 L. Ed. 2d 284 (1967).

In deciding that Section 3313.66 of the Ohio Revised Code was unconstitutional on its face and in its entirety, the lower court in this case completely failed to give any credence to the distinction between short and long term suspensions such as other courts have found to exist. That failure and the resulting conflict presents a situation which should be resolved. In short, the lower court viewed the Due Process Clause as something which is applicable to every conceivable situation, even

including situations in which no clear constitutionally protected right is involved.

CONCLUSION

The substantial nature of the constitutional questions posed by the lower court opinion is apparent. The lower court opinion is in direct conflict with this Court's decision in *San Antonio Independent School District v. Demetrio P. Rodriguez,* 36 L. Ed. 2d 16, 43, 44 (1973), relating to the nature of education and in direct conflict with this Court's decisions relating to the factors that must be present before the protections required by the Due Process Clause attach. If there is any distinction between a short suspension, a long term suspension and an expulsion, then the conclusion that the Due Process Clause attaches no matter what the nature of the discipline cannot be supported. A person who receives a three day or five day suspension, for example, cannot be said to be condemned to suffer grievous loss, even of an unprotected right. In effect, the lower court's opinion ignores the tests established by this Court and states that *any* suspension in the educational process is violative of the Due Process Clause of the United States Constitution, except that in certain limited situations, suspensions up to three days may be handed out without first having a hearing. The Constitution does not command the drawing of such fine distinctions.

Further, the lower court opinion is in direct conflict with other decisions of both the circuit and district courts regarding short suspensions. A three-judge court had previously specifically upheld a statute permitting a temporary ten day suspension as not being violative of the Due Process Clause. *Banks v. Board of Public Instruction of Dade County,* 314 F. Supp. 285 (1970).

If education and control of the classroom in the high school setting are to remain primarily a matter of local control, then a real need exists to resolve the questions surrounding discipline which continue to occur. The Due Process Clause should not be used or become a weapon to venerate form over real substance. The relationship between education and the students who participate in the system is a matter of state concern and state law. No deference was shown to that principle in this case. If the power of a principal to suspend a student is to be further restricted from ten days to three days, such action should rest with the body that created the system, namely the State Legislature.

The interest of the state in its educational system and discipline within that system has not become so inferior to the interest of a student that it can be concluded that a restrictive statute such as section 3313.66 of the Ohio Revised Code is unconstitutional on its face. *Cook v. Carlson,* 364 F. Supp. 24, 26, 27 (1973). The Federal Constitution does not command such finite scrutiny of legislative discretion.

The decision of the lower court should be reversed.

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APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action 71-67

EILEEN LOPEZ, et al.,
Plaintiffs

vs

HERBERT M. WILLIAMS, et al.,
Defendants

JUDGMENT

This action came on for hearing before the Court, the Honorable John W. Peck, Judge, United States Court of Appeals for the Sixth Circuit; the Honorable Joseph P. Kinneary, Chief Judge, United States District Court; and the Honorable Carl B. Rubin, United States District Judge, and the issues having been duly heard and a decision having been duly rendered;

IT IS ORDERED AND ADJUDGED that plaintiffs were denied due process of law because they were suspended without adequate hearing. It is further concluded that the statute and regulation challenged are not unconstitutionally vague and overbroad.

The Court Declares that Section 3313.66, Ohio Revised Code and the regulations adopted by the Columbus Public Schools pursuant thereto which were in force at the time of plaintiffs' suspensions are unconstitutional, in that they provide for suspension from the Columbus Public Schools without first affording the student due process of law.

It is Ordered that the defendants delete all reference to the suspensions and disciplinary transfers of plaintiffs from the records of the Columbus Public Schools.

IT IS FURTHER ORDERED that the plaintiffs recover of defendants their costs of action.

Dated at Columbus, Ohio, this 17th day of September, 1973.

JOHN D. LYTER
Clerk of Court

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

Civil Action 71-67

EILEEN LOPEZ, et al.
Plaintiffs

vs

HERBERT M. WILLIAMS, et al.
Defendants

ORDER

For the reasons and on the grounds which more fully appear in the Opinion of this Court filed simultaneously herewith, it is concluded that plaintiffs were denied due process of law because they were suspended without adequate hearing. It is further concluded that the statute and regulation challenged are not unconstitutionally vague and overbroad.

The Court DECLARES that Section 3313.66, Ohio Revised Code and the regulations adopted by the Columbus Public Schools pursuant thereto which were in force at the time of plaintiffs' suspensions are unconstitutional, in that they provide for suspension from the Columbus Public Schools without first affording the student due process of law.

It is hereby ORDERED that the defendants delete all reference to the suspensions and disciplinary transfers of

plaintiffs from the records of the Columbus Public Schools.

BY ORDER OF THE COURT
JOHN W. PECK
Judge, United States Court of Appeals for the Sixth Circuit
JOSEPH P. KINNEARY
Chief Judge
United States District Court
CARL B. RUBIN
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action 71-67

EILEEN LOPEZ, et al.

Plaintiffs

vs

HERBERT M. WILLIAMS, et al.

Defendants

OPINION

Before John W. Peck, Judge, United States Court of Appeals for the Sixth Circuit; Joseph P. Kinneary, Chief Judge, United States District Court; and Carl B. Rubin, United States District Judge.

Kinneary, Chief Judge. This matter is before the Court on plaintiffs' motion for judgment on the pleadings under the provision of Rule 12(c) of the Federal Rules of Civil Procedure.

This is an action for injunctive and declaratory relief arising out of the suspension of the nine plaintiffs from Columbus Public School System in February and March, 1971.

A Three-Judge Court was convened under the provisions of Title 28, United States Code, Section 2281. *Calloway* v. *Briggs*, 443 F. 2d 296 (6th Cir. 1971).

The Court has jurisdiction under the provisions of Title 28, United States Code, §§1343(3), 2201 and 2202. Plaintiffs' claims for relief are alleged under the provisions of Title 42, United States Code, Section 1983.

Plaintiffs challenge the constitutionality of §3313.66 of the Ohio Revised Code and §1010.04 of the Administrative Guide of the Columbus Public Schools, and the Co-

lumbus Public School Policy Statement on Discipline. They allege two claims for relief. First, suspension without the minimal due process safeguards of notice and prior hearing is violative of the Fourteenth Amendment to the Constitution of the United States because it denies students an education, an important public right, without due process of law. Second, the statute and regulation are unconstitutionally vague and overbroad because they provide no ascertainable standard for acceptable conduct.

Upon the consent of all parties and the other members of the panel, the factual issues in this case were tried before the Honorable Joseph P. Kinneary, Chief Judge, United States District Court for the Southern District of Ohio, *See, Rosado* v. *Wyman*, 397 U.S. 397, 40² (1970) who made the following findings of fact which are adopted fully by the Three-Judge District Court.

FINDINGS OF FACT

The plaintiffs presented evidence relating to the dismissals from school of Dwight Lopez, Betty Jane Crome, Susan Cooper, and Deborah Fox. In addition, Phillip Fulton, principal of Marion-Franklin High School during the 1970-1971 school year testified by deposition concerning the suspensions from Marion-Franklin High School of plaintiffs Tyrone Washington, Clarence Byars, Rudolph Sutton and Bruce Harris. There was no evidence presented to the Court concerning the suspension from the Columbus Public School System of the plaintiff Carl Smith.

Plaintiffs seek to maintain a class action. Phillip Fulton, principal of Marion-Franklin High School in February-April, 1971, testified on deposition that on or about March 15, 1971 fourteen students were recommended

for suspension from his school. Dwight Lopez, a student at Central High School testified that he personally knew more than 75 students who were suspended from Central High School on February 26, 1971. Doctor John Ellis, Superintendant of Columbus Public Schools, testified on deposition that the Department of Pupil Personnel keeps some records on suspensions, but he did not have them available at the time of his deposition. No other evidence relating to the number of students suspended in February-April, 1971 was received by the Court.

Section 3313.66, Ohio Revised Code provides, in relevant part, that:

> . . . the principal of a public school may suspend a pupil from school for not more than 10 days. . . . Such . . . principal shall within 24 hours after the time of expulsion or suspension, notify the parent or guardian of the child, and the clerk of the Board of Education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent, or guardian, or custodian of a pupil so expelled may appeal such action to the Board of Education at any meeting of the Board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the Board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The Board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester.

Section 1010.04 of the Administrative Guide to the Columbus Public Schools (January 2, 1973) provides that:

> Pupils may be suspended or expelled from school in accordance with the provision of §3313.66 of the Revised Code.

The parties introduced into evidence three memorandums from the Department of Pupil Personnel of the Columbus Public Schools on the subject of suspension of students from school. The earliest memorandum is dated August 16, 1971.[1] None of the memorandums were in effect at the time plaintiffs were suspended from the Columbus Public Schools.

Phillip Fulton, principal of Marion-Franklin High School during the 1970-1971 academic year, testified that the following procedure was in effect at the time of

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[1]The memorandums are dated August 16, 1971; February 21, 1973; and July 10, 1973. The memorandum of August 16, 1971 provides, in relevant part, with regard to suspension that when a principal suspends a student he should:

"1. Notify him of the exact reason and the term of the suspension.
2. Notify the parent, by phone if possible, and explain the suspension.
3. Within 24 hours, write the parent a letter including the reason of the suspension.
4. Send a carbon copy of this letter to Pupil Personnel. On cases where you expect difficulty, or on cases which are not retained, be sure to include a brief summary of the incident along with any other information which may be of help.
5. Be ready and available for a conference if one is requested by the parent.

The length and term of a suspension are left at the discretion of the principal. Be sure the students and parents know the exact date when the suspension ends."

The memorandum of February 21, 1973 provides, in relevant part, with regard to suspension that when a principal suspends a student he should:

"1. Notify him [the student] of the exact reason and term of the suspension.
2. Notify the parent, by phone if possible, and explain the suspension.
3. Within 24 hours, write the parent a letter including the reason for the suspension and the date the student is to return to school.
4. Send a carbon copy of this letter to pupil personnel. On cases where you expect difficulty, or on cases which are not routine, be sure to include a brief summary of the incident along with any other information which may be of help.

The length and term of a suspension are left at the discretion of the principal. Be sure the students and parents know the exact date when the suspension ends."

the suspensions which are the basis of the present action:

> Basically, the assistant principals are the disciplinarians. They held the discipline responsibility in a given school. The majority of times, the incident does occur with an administrator. It occurs in a situation where a teacher refers it to administration. . . .
>
> The teacher would send to the office in written form, it was to be written. We had a form that we followed indicating the incident, what had happened, and this was brought to the office at the time the student was brought to the office. The administrator then would go over the incident as written or as dictated by the teacher with the student. The student then would be given an opportunity, if the student didn't agree with the way it happened, then he would send back for the teacher and bring the teacher in who if we have some reason to see if there is a discrepancy. We then asked the teacher to interpret what he has written for us. If there is a large discrepancy where a student would deny it and the teacher would confirm it, then we would react upon this information according to what the teacher tells us. Then if it is deemed that there is a suspension, you follow the procedure that I have already formulated. You call the parent first and then send the student home. Again, if we can't find the parent, we keep the student until his normal school day is over. So they are retained until their school day is completed. The parent, if he can be contacted in the meantime, then would be informed of the situation. This would be followed by a letter stating again that we would discuss but including also the time of the appointment, if it has been prearranged. If not, the parent may get in tomorrow. They might say that they can get in tonight and maybe have time to see the administrator and that would be set up at that time. . . .

. . .

> [At the conference] [t]he problem, the individual, we talk about their school record. We get their entire school record. We talk about their academic problems, if they exist. We talk about their potential. We talk about their goals. It is a conference to remedy the problem and you try to find a solution so that the student is successful in his schooling. . . .
>
> [It is not a conference to verify the facts supporting the suspension.] It is to communicate with the parent, as part of my responsibility, the problem that exists and ask for their help. We inform them and then find out what directions we can take that will eliminate the need for further problems.

On July 10, 1973, the Department of Pupil Personnel of the Columbus Public Schools forwarded to all principals a memorandum containing guidelines for the suspension of students. The memorandum contained the following guidelines:

A. Grounds for suspension.

1. Violation of any City of Columbus Ordinance or state or federal law; and
2. Violation of written school rules of Board of Education regulations; and
3. Activities which interfere with or threaten the orderly functioning of school activities including classrooms, extra-curricular and athletic activities; and
4. Any activity which is grounds for expulsion. This shall include, but not be limited to, assault on a teacher, arson, or destruction of school property, active leadership in school disruption and direct refusal to follow a direct order from an administrator in time of school tension.

B. Suspension procedures.

1. Whenever an incident occurs which may lead to a suspension, the principal or assistant prin-

cipal shall investigate the nature of the alleged offense before commencing suspension procedures. Unless the pupil is unavailable or unwilling to discuss the incident with the principal, this investigation shall include a discussion with the pupil so that the pupil may be given an opportunity to be heard with respect to the alleged offense.

2. If the principal determines that grounds for suspension do exist, he shall notify the pupil of the exact reason and length of the suspension and further inform the pupil that the suspension means he must stay off school property and away from school-sponsored activities during the entire term of the suspension.
3. Notify the parent or guardian of the suspension, by phone if possible, and explain the reason and length of the suspension. Except in cases of disruption where circumstances make it vital that one or several pupils be removed from the school property immediately because of a threat to the safety of other pupils, faculty or school property, no pupil shall be released from school during the school day without notifying the parent or guardian in person or by phone.
4. The parent or guardian shall be provided an opportunity to attend a conference with the principal, to review the reasons for the suspension.
5. Within 24 hours after the incident leading to suspension, a letter shall be written to the parents or guardian which shall include the reasons for and term of the suspension and that a conference with the principal will be arranged, at mutual convenience, at the earliest possible time. A carbon copy of this letter, together with relevant information regarding the suspension, shall be sent to Pupil Personnel (designated agent of Clerk of Board of Education).

6. In the event that any suspension is subsequently found to be erroneous, all references to the suspension shall be expunged from the school records.
7. At the conclusion of a suspension, it is the responsibility of the principal to see that the pupil is informed that the suspension is terminated and he is eligible to return to school.

DWIGHT LOPEZ

In February, 1971, Dwight Lopez was 19 years of age and a student at Central High School, Columbus, Ohio. He was the only witness to give testimony regarding his suspension from Central High School. Defendants did not present any evidence regarding Dwight Lopez's suspension from Central High School, other than the letters sent by the Administration at Central High School to Dwight Lopez's parents regarding the suspension.

Dwight Lopez testified that in late February, 1971, there was tension at Central High School over Black History Week. On the morning of February 26, 1971, he had a free study period in the lunch room. While he was in the lunch room, black students came in and started overturning tables. Dwight Lopez testified that he and several of his friends walked out of the lunch room. He testified that he took no part in the unlawful activity, and that he did not violate any school rule or any other rule.

On the morning of February 26, 1971, school was suspended at Central High School. Dwight Lopez returned to his home. There he received a phone call from Mr. Calvin Parks, principal of Central High School, notifying him that he had been suspended. He was not advised of the reasons for the suspension.

Dwight Lopez's parents received the following letter dated February 26, 1971:

Dear Mr. and Mrs. Lopez:

We have had a continued [sic] problem in school for several days and today a group of students disrupted our complete school program.

Dwight was in the group and we need to have a personal conference with you and Dwight to determine what the problem may be. Please keep him at home until a conference can be arranged. This will take some time. We will be communicating with you.

Respectfully,
CALVIN PARKS, *Principal*

On March 1, 1971, Mr. and Mrs. Lopez received the following letter:

Dear Mr. and Mrs. Lopez:

It will be necessary for you to appear at the Board of Education before Dwight returns to school. I have given your telephone number to Mr. Williams of the Pupil Personnel Office of the Board of Education. He will be in touch with you to set up an appointment.

Dwight is to remain home during the hours school is in session.

Yours truly,
JAMES C. FURGASON

On March 5, 1971, Mr. and Mrs. Lopez were advised that a meeting had been set for March 8, 1971. Dwight Lopez testified that on March 8, 1971, he, his mother and a sister went to the Board of Education building but could not get in because the entrance was blocked by several hundred persons who were present at a rally protesting Board of Education policies. No further meeting was scheduled.

Dwight Lopez testified that his sister wrote a letter to Columbus Public School officials protesting his suspension.[2] He further testified that following March 8, 1971, his mother and his sister called the Office of Pupil Personnel but could not get past the secretary. On March 24, 1971, Dwight Lopez was transferred from Central High School to the Adult Day School. He did not request this transfer. Dwight Lopez testified that he did not attend the Adult Day School during the Spring of 1971. However, he returned to the Columbus Adult Night School and received his diploma on June 10, 1972.

BETTY CROME

In March, 1971, Betty Crome was 13 years of age and a student at McGuffey Junior High School. She was the only witness to give testimony regarding her suspension from McGuffey Junior High School. The defendants presented no testimony regarding her suspension, other than a letter from the principal of McGuffey Junior High School to Miss Crome's parents. Betty testified that on March 3, 1971, she went to her first period class. When class was dismissed, there were disturbances in the hall.

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[2]Defendants offered into evidence Dwight Lopez's Columbus Public School's cumulative record folder. It contained the following letter, dated March 24, 1971 to Mrs. Eileen Lopez from Mr. H. M. Williams, Director of Pupil Personnel from Columbus Public Schools:

Dear Mrs. Lopez:

I have received a letter from your daughter, Mrs. Alana Robinson, pertaining to your son, Dwight. She was inquiring as to the status of Dwight and his returning to school in Columbus.

As you no doubt recall, I had scheduled an appointment with you and Dwight on March 8, 1971 at 8:30 a.m. The purpose of this conference was to discuss various possibilities relating to Dwight's future educational plans.

This appointment was not kept nor did I receive from you a request to set up another conference. Since Dwight is 19 years of age and is no longer of compulsory school age, I thought that possibly you had made other plans for Dwight.

In regards to Dwight's placement in a Columbus school, permission is granted for him to enroll in Adult Day School, 272 S. Nelson Road, immediately. Waiver of fees is being recommended.

Sincerely,
H. M. WILLIAMS, DIRECTOR
Pupil Personnel

Students were breaking light bulbs and throwing glasses in the school cafeteria. She could not get to her second period class, therefore she went out into the playground with other students. The principal came out into the playground and told the students assembled there to go home.

Betty further testified that she went with other students to Linden McKinley High School which was on her way home, and it was her purpose to return to her home. However, she stopped with the other McGuffey Junior High School students at Linden McKinley High School. There she was arrested by Columbus Police officers and taken to the Juvenile Bureau of the Columbus Police Department. Police called her mother who came to get her. Prior to releasing her they discussed Betty's situation with her mother. No charges were brought by the police department.

On or about March 3, 1971, Betty's mother received the following letter:

> Dear Mrs. Adams:
>
> This is official notification that your son/daughter, Betty J. Crome, has been temporarily suspended from McGuffey Junior High. This suspension will continue until March 8, 1971 at 10:45 at which time you are to accompany him/her to school for a conference. During this time he/she is to remain at home during school period.
>
> Yours respectfully,
> FRANK D. MASON, *Principal*

Betty further testified that neither she nor her parents were ever advised of the reasons for her suspension. Her mother never talked with the principal regarding the suspension. She was returned to McGuffey Junior High School on or about March 8, 1971. She was not given an opportunity to make up work that she missed during the period of her suspension. She is currently a student in the Columbus Public School system.

DEBORAH FOX

In March, 1971, Deborah Fox was 16 years of age and a tenth grade student at Marion-Franklin Senior High School. She testified that on March 10, 1971, there were disturbances at Marion-Franklin High School. During the noon hour, Mr. Kollmer, an assistant principal, came up to her in the cafeteria and told her that he wanted her to come to his office. Mr. Kollmer said that if she didn't go to his office, she could go home for 10 days. Miss Fox went to Mr. Kollmer's office after talking with her mother on the telephone. Mr. Kollmer then told her that she was suspended for 10 days. She testified that she did not do anything which violated any rule or regulation of the school.

Miss Fox further testified that she was not given an opportunity to explain her side of the story. There was no hearing in which the facts underlying her suspension was determined.

On March 19, 1971, she went with her father to Mr. Kollmer's office and she was advised that she was again suspended for a period of 10 days. She stated no reason was given for the suspension.

Miss Fox further testified that following this second 10 day suspension, she was transferred from Marion-Franklin to South High School and completed the school year there. Her family then moved into the district of East High School and she was permitted to attend school there. Subsequently, she graduated from Central Night School in June, 1972.

Betty further testified that she was not given an opportunity to make up any of the work that she missed during her suspension. She believed that her grades went down following her suspension and transfer.

Phillip Fulton, principal of Marion-Franklin High School, gave testimony by deposition which is in conflict with the testimony given by Deborah Fox. This prinicpal testified that on Wednesday, March 10, 1971, at approxi-

mately 9:00 a.m., students were assigned either to a "club activity" or to a study hall. Four girls, including Deborah Fox, left their club "and had gone into the halls and created a disturbance". They refused to obey a teacher's order to return to their club activity. Two assistant principals were unable to get the four girls to abide by school rules. Mr. Fulton then arrived, and told the girls to report to their assigned class. Mr. Fulton did not suspend any of the students. They apparently complied with his order to return to class.

Mr. Fulton testified that during the confrontation in the hallway Miss Fox was "very loud and disrespectful." She shouted at Mr. Kollmer, an assistant principal, "I hate you." During the noon hour Mr. Kollmer confronted Miss Fox in the school cafeteria. She was "still making negative comments." Mr. Fulton testified that she again told Mr. Kollmer "I hate you." Mr. Kollmer told her to report to the administration office. Miss Fox refused. Mr. Kollmer then contacted her mother and requested that she come to the school to pick her up. Mr. Kollmer talked with plaintiff's mother prior to imposing the suspension. Mr. Fulton acquired his information regarding Miss Fox's conduct in part as a result of reports made to him by Mr. Kollmer. He also personally observed and heard Miss Fox's disruptive activity in the administration offices. Mr. Fulton testified that she was making rude and derogatory remarks to both of his assistant principals, Mr. Kollmer and Mr. Gill.

On March 10, 1971, Mr. Kollmer wrote the following letter to Miss Fox's parents:

> Dear Parents:
>
> I have suspended Deborah from Marion-Franklin High School until Friday, March 19.
>
> Deborah was extremely defiant and disrespectful with the assistant principal today.
>
> During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.
>
> Sincerely,
> RICHARD KOLLMER,
> *Assistant Principal*

Mr. Fulton testified that on March 19, 1971, Miss Fox "returned to school with her parents again and repeated the same kind of behavior that she had repeated earlier, again being disrespectful of Mr. Kollmer . . . and disrespectful in the office." On March 19, 1971, Mr. Kollmer sent the following letter to Miss Fox's parents:

> Dear Parents:
>
> I have suspended Deborah Fox from Marion-Franklin High School until Monday, March 29, or until contacted by Mr. Robert Carter or his representative regarding your daughter's school placement.
>
> During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.
>
> Sincerely,
> RICHARD KOLLMER,
> *Assistant Principal*

Mr. Fulton testified that he and his staff exhausted all avenues open to them with regard to Miss Fox's school behavior. He testified that she was a bright student but did not apply herself because she had a peer group position of leadership which identified her in the role of militant. Mr. Fulton believed that the transfer and consequent change of environment would result in better academic achievement for Miss Fox. Miss Fox's cumulative record folder contains the following entry under a category denominated "Additional Test Results

— Comments": "3-15-71 Suspended for student disruption".

SUSAN COOPER

Susan Cooper testified that in March, 1971 she was an eleventh grade student at Marion-Franklin High School. On Monday, March 15, 1971, there was racial tension at Marion-Franklin High School. She wanted to go home, but was unwilling to leave without an excuse. She went to the school attendance office in an attempt to be excused. She talked with Mr. Richard Kollmer, assistant principal, who told her that she had to go to class. She told Mr. Kollmer that her mother had told her to go home if there were continuing tensions in the school. Mr. Kollmer told her "Well, you are suspended anyway."

Susan further testified that she met her mother on her way home. She and her mother returned to the school. They waited to talk with Mr. Kollmer but he was unavailable. Mr. Gill, another assistant principal, told them to go home for 10 days, and that when she came back they could have a conference. She was not given an opportunity to tell her side of the story.

Mr. Gill sent Mrs. Cooper the following letter dated March 16, 1971:

> Dear Mrs. Cooper:
>
> I have suspended Susan, your daughter, from Marion-Franklin High School until Thursday, March 25. I will reserve 11:00 a.m. on this day for a conference with you and your daughter.
>
> Susan was involved in the disturbance at school on Monday, March 15, at which time she showed a lack of respect for the principal.
>
> During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.
>
> Sincerely,
> **Oscar R. Gill,**
> *Assistant Principal*

Susan further testified that following the 10 day suspension, she returned to Marion-Franklin High School with her mother, at which time they had a conference with the principal or an assistant principal. The facts leading up to the suspension were not discussed in any detail.

Susan Cooper was not permitted to make up any work she missed during the 10 day suspension. During the 1971-1972 school year Susan was elected homecoming queen of Marion-Franklin High School. She graduated in June, 1972.

Mr. Fulton, the principal at Marion-Franklin High School, testified that on March 15, 1971, he ordered Miss Cooper to go to class, but that she refused. Mr. Fulton further testified that she was insolent and encouraged other students not to obey his order to go to class.

OTHER STUDENTS

The named plaintiffs, Tyrone Washington, Clarence Byars, Rudolph Sutton, Bruce Harris and Carl Smith did not testify at the hearing before the single-Judge District Court. No evidence was offered in their behalf.

Mr. Fulton, the principal of Marion-Franklin High School gave deposition testimony regarding the suspensions of Tyrone Washington, Clarence Byars, Rudolph Sutton, and Bruce Harris.

Mr. Fulton testified that on Monday, March 15, 1971,

at approximately 9:00 a.m., there were disturbances in the eight to ten homerooms which were held in the school auditorium. When the disrupting students were notified that if they did not return to their homerooms, they would be suspended, they voluntarily went to their homerooms.

When the class bell rang for the first morning period, a group of black students entered the auditorium and refused to leave. The auditorium was scheduled to be used as a classroom during the first period. The group of students three times refused to obey an order to leave. One of the students, Tyrone Washington, told Principal Fulton that they (the students) were tired of listening to him and that now it was his turn to listen to them. Tyrone Washingon further told Principal Fulton that they (the students) were going to tell him what was to be done. The principal suspended Tyrone Washington for disrupting the educational program. Washington was removed from the auditorium by two plain-clothed policemen.

Oscar Gill, an assistant principal at Marion-Franklin High School, sent a letter dated March 16, 1971 to the parents of Tyrone Washington:

> Dear Parents:
>
> I have suspended Tyrone, your son, from Marion-Franklin High School until Thursday, March 25. The Pupil Personnel Department of the Columbus Board of Education will notify you concerning a disposition of this case.
>
> Tyrone was involved in a disturbance at school on Monday, March 15. He defiantly refused to follow the directions of the principal. Furthermore, he created an explosive situation.
>
> During his suspension, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.
>
> Sincerely,
> OSCAR R. GILL,
> *Assistant Principal*

School records indicate that Tyrone Washington was graduated from Marion-Franklin High School on June 6, 1971. The school records contain the following information under the heading "Additional Test Resuts — Comments": "3-15-71 Suspended for school disruption".

Mr. Fulton further testified that while Tyrone Washington was being removed from the auditorium Rudolph Sutton attacked a police officer. Sutton was then suspended from school. On March 16, 1971, Mr. Gill, an assistant principal, had a conference with Rudolph Sutton, his parents and his sister. Another conference was held on March 25, 1971 with Rudolph Sutton and his family.

On March 23, 1971, Rudolph Sutton was transferred from Marion-Franklin High School to South High School. He was graduated from South High School on June 6, 1971. Under the heading "Additional Test Results — Comments" the following entry appears on his school records: "3-18-71 Suspended for school disruption".

Mr. Fulton testified that Clarence Byars was in the halls of Marion-Franklin High School on March 15, 1971 and refused an order to go to class. Further, Mr. Fulton testified that Clarence Byars encouraged other students to refuse to go to class. Mr. Fulton then called Clarence Byars' mother and conferred with her on the telephone. Clarence Byars was suspended from school on March 15, 1971.

Richard Kollmer, assistant principal at Marion-Frank-

lin High School, wrote the following letter to Clarence Byars' parents dated March 15, 1971:

> Dear Parents:
>
> I have suspended Clarence from Marion-Franklin High School until Thursday, March 18. I will reserve 9:00 a.m. on this day for a conference with you and your son.
>
> Clarence refused to go to class as directed, was disrespectful with the principal, and was inciting a school disruption.
>
> During the suspension period, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.
>
> Sincerely,
> RICHARD KOLLMER,
> *Assistant Principal*

Columbus Public School records indicate that Clarence Byars was graduated from Marion-Franklin High School on June 11, 1972. Clarence Byars' school file also contains a copy of the March 15, 1971 letter from Assistant Principal Richard Kollmer, notifying his parents of his suspension from high school.

Mr. Fulton testified that on March 23, 1971, during the course of an assembly in the Marion-Franklin High School auditorium Bruce Harris and several other black students stood up, turned their backs to the assembly speaker, and gave the "Black Pledge". Bruce Harris was suspended for disrupting the assembly program.

Mr. Fulton testified that he attempted to contact Bruce Harris' brother, who acted as his guardian, but was unable to do so. Bruce Harris did not return to school on March 30, 1971 when his suspension was terminated. The following letter was sent by Assistant Principal Oscar R. Gill dated March 23, 1971 to Bruce Harris' brother:

> Dear Mr. and Mrs. Robinson:
>
> I have suspended Bruce, your brother, from Marion-Franklin High School until Tuesday, March 30.
>
> During the suspension the Pupil Personnel Department of the Columbus Board of Education will review with you the contents of the letter of November 6, 1970.
>
> Bruce disrupted the assembly and walked out of the assembly during this morning. This he did after the principal made clear that if a student did, he would be suspended.
>
> During the suspension period, your brother is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at home.
>
> Sincerely,
> OSCAR R. GILL,
> *Assistant Principal*

Records of the Columbus Public School system indicate that Bruce Harris graduated from the evening high school on June 14, 1972. There is no indication in his official school records that he was suspended from Marion-Franklin High School.

There was no testimony regarding Carl Smith's suspension from the Columbus Public Schools. Carl Smith's Columbus Public School's file indicates that he was graduated from Columbus Evening High School on June 14, 1972. There is no indication in the school records submitted to the Court that plaintiff was suspended from high school in March of 1971. There is an indication that he was withdrawn from Central High School on March 31, 1971 because he was over-age.

In addition to the above facts found by the single-Judge United States District Court and adopted by the Three-Judge United States District Court, the parties entered into a stipulation of fact filed with the Court on October 10, 1972. A copy of the stipulation of fact is attached as an appendix to the Court's finding of facts.[3]

Norval Goss, present Director of Pupil Personnel of the Columbus Public Schools, compiled a chart of the named plaintiffs' cumulative academic record. He drew the conclusion that plaintiffs' suspensions had no effect on their academic achievement as reflected in their grade point averages.[4]

Mr. Goss testified that students receive zeros for work missed during a suspension. They are not accorded the opportunity to make up the work. Mr. Goss conceded that any absence from school may have negative educational effects.

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[3]On May 25, 1973, counsel for defendants filed a motion to withdraw the stipulation on the ground that the defendants were then informed that a hearing was going to be held on the factual issues and that plaintiffs should be put to the burden of proving the allegations contained in their complaint. The Court notes that the facts contained in the stipulation were all proven by the testimony and exhibits offered at the hearing before the single-Judge District Court. Basically, the stipulation itself was skeletal in nature. The facts conceded by defendants were those contained in letters from school administrators to suspended students and their parents and notations in students' official Columbus Public School records. There is no indication in the memorandum in support of the motion to strike the stipulation that any matters contained in the stipulation were untrue. Thus, the facts in the stipulation would be subject to a request for admissions under Rule 36(a), Fed. R. Civ. P. Additionally, the Court notes that defendants in their answer admitted almost every fact contained in the stipulation. All of paragraphs 5, 7, 8, 9, 10 and 13 of the stipulation are admitted. Paragraph 1 is admitted, except for the seventh sentence thereof. Paragraph 2 was admitted, except for Betty J. Crome's age. Paragraph 3 was admitted, except for the third and fifth sentences. Paragraphs 4, 6, 11, 12, 14 and 15 of the stipulation are not admitted by the answer. Upon consideration, and being fully advised, the Court HOLDS that the motion is without merit, and therefore it is DENIED.

Defendant's Exhibit B is attached to the findings of fact and made a part of this Opinion and Order as if fully written herein.

Plaintiffs presented evidence that suspension from school results in psychological harm to the student. The effects of suspension are not uniform. Most suspended students respond in one or more of the following ways:

1. The suspension is a blow to the students' self-esteem.
2. The student feels powerless and helpless.
3. The student views school authorities and teachers with resentment, suspicion and fear.
4. The student learns withdrawals as a mode of problem solving.
5. The student has little perception of the reasons for the suspension. He does not know what offending acts he committed.
6. The student is stigmatized by his teachers and school administrators as a deviant. They expect the student to be a troublemaker in the future.

A student's suspension may also result in his family and neighbors branding him a troublemaker. Ultimately repeated suspension may result in academic failure.

APPENDIX

	1967-68		1968-69		1969-70		1970-71		1971-72		1972-73		
	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Final point average
Byars, Clarence			5.9	2.70	5.7	2.67	5.1	2.63	4.0	2.00			2.559
Cooper, Susan			4.7	1.98	5.7	1.91	5.1	1.80	2.5	2.20			1.933
Crome, Betty							(2.8)	.79	(2.2)	.71	4.2	1.00	
Fox, Deborah					4.7	2.04	5.7	1.91	5.0	1.36	1.5	3.66	2.087
Harris, Bruce	4.2	1.33	3.2	.76	2.6	.63	2.5	1.17	4.0	1.89			1.074
Lopez, Dwight	4.2	1.33	.2	.04	5.6	.85	3.0	1.66	4.0	2.11			1.037
Smith, Carl	4.7	1.19	1.0	.19	4.2	1.09	2.7	1.90	4.4	1.77			1.258
Sutton, Rudolph	4.2	1.57	5.9	1.68	4.6	2.28	4.0	1.75					1.818
Washington, Tyrone	4.8	2.00	3.7	1.40	4.2	2.00	5.5	2.09					1.861

CONCLUSIONS OF LAW

The Three-Judge Court adopts in full the factual findings of the single-Judge District Court. The factual issues having been resolved, the case is now before the Three-Judge Court for decision of the legal questions presented. Before reaching the constitutional questions presented, several procedural and jurisdictional issues must be considered.

CLASS ACTION

Plaintiffs seek to maintain this action "on behalf of all other students residing in the City of Columbus who are similarly situated and affected by the policy and usage complained of" in the complaint.

The prerequisites of a class action are that:

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
> Rule 23(a), FED. R. CIV. P.

When the class is limited to all students of the Columbus Public Schools suspended on or after February, 1971, the class alleged satisfies each of these prerequisites. The Court determines that the class action is maintainable under the provisions of Rule 23(b) (2) in that the Columbus Public Schools and their employees have acted in accordance with §3313.66, Ohio Revised Code and guidelines established by the Department of Pupil Personnel in all suspensions.

JURISDICTION OVER THE SUBJECT MATTER

Title 42, United States Code, Section 1983 provides, in relevant part, that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The complaint alleges that §3313.66, Ohio Revised Code, which provides that a "principal of a public school may suspend a pupil from school for not more than ten days" with a provision for notice to the student's parents and the clerk of the Board of Education, is unconstitutional.

Defendants argue that §3313.66, Ohio Revised Code is not the source of a principal's authority to suspend a student. Rather, defendants assert in their brief that "a school board and the local school officials possess historical inherent power" to discipline students.[5] Section 3313.66, Ohio Revised Code, defendants argue, is not a source of authority, but a limitation on school authorities' inherent power to discipline students. Defendants contend that because they were acting pursuant to their

[5]Defendants cite *Rumler* v. *Board of School Trustees*, 327 F.Supp. 729, 737 (D. S. C. 1971), *affirmed* 437 F.2d 953 (4th Cir. 1971), and the cases cited therein, in support of the inherent power of school officials to discipline students. See also, *Tate* v. *Board of Education*, 453 F.2d 975, 978-978-979 (8th Cir. 1972); *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195, 200 (6th Cir. 1969), *cert. denied* 399 U.S. 906 (1970); *Esteban* v. *Central Missouri State College*, 415 F.2d 1077, 1088 (8th Cir. 1969), *cert. denied* 398 U.S. 965 (1970); *Banks* v. *Board of Public Instruction*, 314 F.Supp. 285, 290 (S.D. Fla. 1970), *affirmed* 450 F.2d 1103 (5th Cir. 1970)), *vacated to permit timely filing of notice of appeal*, 401 U.S. 988 (1971); *Jones* v. *State Board of Education*, 279 F.Supp. 190, 202 (M.D. Tenn. 1968), *affirmed* 407 F.2d 834 (6th Cir. 1969), *cert. dismissed as improvidently granted* 397 U.S. 31 (1970), *rehearing denied* 397 U.S. 1018 (1970). *But see*, *Soglin* v. *Kauffman*, 418 F.2d 163, 167 (7th Cir. 1969). The Court in *Rumler* rejected plaintiffs' argument that they were denied due process of law when they were suspended without the protection of due procedural safeguards. However, the Court did not suggest that it was without subject matter jurisdiction to entertain the claim for relief under 42 U.S.C. §1983. Indeed, the Court denied the claim on the merits.

inherent authority and not under color of state law pursuant to Section 3313.66, the complaint fails to establish that the Court has jurisdiction over the subject matter.[6] Article 6, §3 of the Ohio Constitution commands that:

> Provision shall be made by law for the organiation, administration and control of the public school system of the state supported by public funds. . . .

The Ohio Legislature has established school districts, Chapter 3311, Ohio Revised Code, which provide free public elementary and secondary education for every Ohio resident between the ages of six and 21 years.[7] Although imprecise usage has lead to the misconception that the power to discipline is "inherent", see 48 O.Jur. 2d Schools, §176, the power to discipline students is actually mandated by Section 3313.20, Ohio Revised Code, which provides in relevant part:

> The board of education shall make such rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises. . . .

It is well-recognized in Ohio that boards of education are purely creatures of statute whose powers and duties are limited by the Legislature. *Verberg* v. *Board of Education*, 135 Ohio St. 246, 248 (1939); *Perkins* v. *Bright*, 109 Ohio St. 14, 21 (1923); *State ex rel. Clarke* v. *Cook*, 103 Ohio St. 465, 467 (1921).

When defendants acted to suspend plaintiffs they were acting under the color of Article 6, §3 of the Ohio Constitution, legislation implementing Article 6, §3, and the

[6]In their motion to dismiss defendants argue on similar grounds that the complaint fails to allege facts stating a cause of action. There has been a trial of the factual issues before a single-Judge, therefore the three-Judge Court will dtermine the issues on the merits, not by motion to dismiss.

[7]§3321.01, Ohio Revised Code.

rules and regulations adopted by the school board and its delegates pursuant to §§3313.20 and 3313.66, Ohio Revised Code. There is no merit to defendants' contention that they were not acting under color of state law within the meaning of 42 U.S.C. §1983.

JURISDICTION OVER THE PERSON

Defendant Board of Education argues that the Court does not have jurisdiction over it, because it is not a "person" within the meaning of 42 U.S.C. §1983.[8]

Under Ohio law a board of education is a "body politic and corporate" which is "capable of suing and being sued". Section 3313.17, Ohio Revised Code. Even though it is not immune from suit,[9] an Ohio board of education is a political subdivision of the State. *See, Brown* v. *Board of Education*, 20 Ohio St. 2d 68, 71-72 (1969).

In *Monroe* v. *Pape*, 365 U.S. 167, 187-192 (1961), the Supreme Court held that a city was not amenable to a suit for damages under the provisions of 42 U.S.C. §1983 because the legislative history of the Civil Rights Act of 1871 demonstrated a Congressional intent that political subdivisions of a State not be included within the definition of a "person" under the Act.

Subsequent to the decision many federal courts recognized a distinction between suits for damages, which were barred by *Monroe* v. *Pape*, and suits for declaratory and injunctive relief, which were considered actionable. *See,*

[8]Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . ., subjects or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

[9]Whether a board of education is a sovereign arm of the State cloaked with immunity which the State has waived or an entity which is not entitled to immunity because it is not sovereign is an unresolved question in Ohio. *Cf. Board of Education* v. *Volk*, 72 Ohio St. 469 (1905) with *State* v. *Gibson*, 130 Ohio St. 318, 322 (1935).

e.g., Dailey v. *City of Lawton*, 425 F.2d 1037 (10th Cir. 1970); *Schnell* v. *City of Chicago*, 407 F.2d 1084 (7th Cir. 1968); *Atkins* v. *City of Charlotte*, 296 F. Supp. 1068 (W.D. N.C. 1969); *Cf. Monroe* v. *Pape*, 365 U.S. *supra* at 191, n. 50.[10] Applying this rationale some courts have held that a school board is a "person" within the meaning of 42 U.S.C. §1983 when the complaint seeks equitable relief only, and not damages. *Butts* v. *Dallas Independent School District*, 436 F.2d 728, 729 (5th Cir. 1971); *Harkless* v. *Sweeny Independent School District*, 427 F.2d 319 (5th Cir. 1970), *cert. denied* 400 U.S. 991 (1971); *Williams* v. *San Francisco Unified School District*, 340 F.Supp. 438, 438-439 (N.D. Calif. 1972); *Schreiber* v. *Joint School District No. 1*, 335 F.Supp. 745, 747 (E.D. Wis. 1972); *Callaway* v. *Kirkland*, 334 F.Supp. 1034, 1036-1037 (N.D. Ga. 1971); *Henson* v. *City of St. Francis School District*, 322 F.Supp. 1034 (E.D. Wisc. 1971); *Local 858 of A.F. of T.* v. *School District No. 1*, 314 F.Supp. 1069 (D. Colo. 1970); *Abel* v. *Gousha*, 313 F.Supp. 1030 (E.D. Wisc. 1970); *Porcelli* v. *Titus*, 302 F.Supp. 726 (D. New Jersey 1969); *Adams* v. *School Board*, 53 F.R.D. 267 (M.D. Pa. 1971). *See, Lee* v. *Board of Regents*, 441 F.2d 1257 (7th Cir. 1971). A number of other courts have held that a school board is not a "person" under the provisions of 42 U.S.C. §1983 regardless of the nature of the relief sought. *Kerr* v. *Clarenceville School District*, 344 F.Supp. 1244, 1246 (E.D. Mich. 1972); *Webb* v. *Lake Mills Community School District*, 344 F.Supp. 791, 807 (N.D. Iowa 1972); *Hayes* v. *Cape Henlopen School District*, 341 F.Supp. 823 (D. Del.

[10]Since the decision in *Monroe* v. *Pape* the United States Supreme Court has decided many cases in which equitable relief was sought under 42 U.S.C. §1983 against a state, city, or school board, without discussion of whether they are "persons" under the Act. *See, e.g., Baker* v. *Carr*, 369 U.S. 186 (1962); *Reynolds* v. *Sims*, 377 U.S. 713 (1964); *Raney* v. *Board of Education*, 391 U.S. 443 (1968); *Tinker* v. *Des Moines*, 393 U.S. 503 (1969); *Boddie* v. *Connecticut*, 401 U.S. 371 (1971); *Broadrick* v. *Oklahoma*, ... U.S. ..... (1973); *San Antonio Independent School District* v. *Rodriguez*, ... U.S. ..... (1973).

1972); *Gruelich* v. *Mounds View Independent Public School District*, 334 F.Supp. 1276, 1279 (D. Minn. 1972); *Conway* v. *Alfred I. DuPont School District*, 333 F.Supp. 1217, 1218 (D. Del. 1971); *Blount* v. *Ladue School District*, 321 F.Supp. 1245, 1250 (E.D. Mo. 1970); *Morey* v. *Independent School District*, 312 F.Supp. 1257 (D. Minn. 1969), *affirmed* 429 F.2d 428 (8th Cir. 1970); *Patton* v. *Bennett*, 304 F.Supp. 297, 299 (E.D. Tenn. 1969). Although the Sixth Circuit has not ruled on the exact question, it has taken the general position that political subdivisions of a state are not "persons" within the meaning of 42 U.S.C. §1893 regardless of the nature of the relief sought. *See, Deane Hill Country Club, Inc.* v. *City of Knoxville*, 379 F.2d 321, 323-324 (6th Cir. 1967).

Two recent United States Supreme Court decisions leave little doubt as to the proper resolution of the issue presented. In *Moore* v. *County of Alameda*, ------ U.S. ------, 41 U.S.L.W. 4627 (1973), the Supreme Court held that a county was not a "person" within the meaning of 42 U.S.C. §1983 because it was not Congress' intention "to impose liability on political subdivisions of the States." In *City of Kenosha* v. *Bruno*, ------ U.S. ------, 41 U.S.L.W. 4819 (1973), the Supreme Court held that Congress did not intend a distinction between actions for money damages and those for injunctive and declaratory relief in defining the word "person" in 42 U.S.C. §1983. Thus, if a governmental entity is a political subdivision of a State, it is not a "person" within the meaning of 42 U.S.C. & 1983 regardless of whether the suit is for legal or equitable relief.

The Columbus Board of Education is a political subdivision of the State of Ohio, and is, therefore, not a "person" within the meaning of 42 U.S.C. §1983. The Court HOLDS that the motion to dismiss the defendant,

Columbus Board of Education, is meritorious, and therefore GRANTED.

Defendants further argue that if the Court does not have jurisdiction over the Columbus Board of Education, it cannot rule on the constitutionality of Section 3313.66, Ohio Revised Code and the regulation adopted pursuant to that section.

The United States Supreme Court in *Ex parte Young*, 209 U.S. 123, 159-160 (1908) stated the theory of liability under §1983:

> If the act which the state Attorney General seeks to enforce be a violation of the Federal Constitution, the officer in proceeding under such enactment comes into conflict with the superior authority of the Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the Supreme authority of the United States.

The named defendants acted under authority of State law as employees of the Columbus Board of Education. If the State law or their actions under color of that law deprived plaintiffs of their constitutional rights, the deprivation is actionable under §1983.

Defendants argue that only the Columbus Board of Education has the authority to abandon the present disciplinary procedures, and therefore the Court has no jurisdiction to declare the constitutionality of the statute and regulations and to enjoin their enforcement.

The Columbus School Board has no authority to license its employees to violate the United States Constitution. If an employee of the Columbus Board of Education acts, under the authority of state law and regula-

tions adopted pursuant thereto, in such a manner as to deprive someone of his constitutional rights, this Court has the power to declare the statute and regulations a nullity and to enjoin the employee from acting under the unconstitutional statute to deprive anyone of his constitutional rights. *Ex parte Young, supra.*

MOOTNESS

Defendants argue that the suspension guidelines adopted by the Department of Pupil Personnel on July 10, 1973 moot the constitutional question presented.

The new guidelines have no impact upon the constitutional claims of the named plaintiffs or of any member of the class they represent who was suspended prior to July 10, 1973.[11] If their suspensions were imposed without due process of law, they have a right to a declaration that the suspension procedure was unconstitutional and to the expunction of any reference to the suspension from all records maintained by the Columbus Public Schools. There is a present, live controversy, and not a moot action *See, Golden* v. *Zwickler,* 394 U.S. 103, 110 (1969).

EXHAUSTION OF STATE COURT REMEDIES — ABSTENTION

Defendants contend that plaintiffs should have contested their suspensions and the constitutionality of §3313.66, Ohio Revised Code in the State courts of Ohio.[12]

There is no requirement under 42 U.S.C. §1983 that State court[13] remedies be exhausted prior to seeking

[11]Plaintiffs have not engaged in conduct which would subject them to the newly adopted suspension procedures. Thus, they cannot sue on their own behalf or on the behalf of others for relief from the newly adopted suspension procedures. *See, Hall* v. *Beals,* 396 U.S. 45, 48-49 (1963).

[12]Defendants suggest the suspensions were reviewable under the provisions of §2506.01, Ohio Revised Code.

[13]More accurately, the doctrine of exhaustion applies to administrative, not judicial, remedies. *Gibson* v. *Berryhill,* ..... U.S. ..... (1973 (slip opinion p. 10, n. 13.

federal relief. *Preiser* v. *Rodriguez,* ..... U.S. ..... (1973) (slip opinion pp. 1-2); *Houghton* v. *Shafer,* 392 U.S. 639 (1968); *King* v. *Smith,* 392 U.S. 309, 312 n. 4 (1968); *Damico* v. *California,* 389 U.S. 416 (1967); *McNeese* v. *Board of Education,* 373 U.S. 668, 671 (1963); *Monroe* v. *Pape,* 365 U.S. 167, 183 (1961).

Defendants also argue that the Court should abstain from determining the constitutionality of §3313.66, Ohio Revised Code, to permit the Ohio court to have the first opportunity to construe its terms. *See, Gibson* v. *Berryhill,* ..... U.S. ..... (1973); *Younger* v. *Harris,* 401 U.S. 37 (1971); *Samuels* v. *Mackell,* 401 U.S. 66 (1971); *Boyle* v. *Landry,* 401 U.S. 77 (197); *Perez* v. *Ledesma,* 401 U.S. 82 (1971); *Dyson* v. *Stein,* 401 U.S. 200 (1971); *Byrne* v. *Karalexis,* 401 U.S. 216 (1971).

The Civil Rights Act of 1871 was intended by Congress to provide a federal remedy for the deprivation of constitutional rights which was supplementary to state remedies. *Monroe* v. *Pape,* 365 U.S. *supra* at 183. The federal remedy is not dependent upon a State remedy.

In the present case plaintiffs have no remaining administrative remedies. Their remedy, if any, is State court review of the administrative action resulting in their suspensions. Under such circumstances a federal court should not abstain from considering the constitutionality of a state statute. *See, Gibson* v. *Berryhill,* ..... U.S. ..... (1973) (slip opinion p. 13).

PROCEDURAL DUE PROCESS

The Fourteenth Amendment to the Constitution of the United States provides that no State shall:

> deprive any person of life, liberty, or property, without due process of law. . . .

The right to procedural due process applies to a broad spectrum of important private and governmentally

created interests. *See, e.g., Vlandis* v. *Kline*, _____ U.S. _____, 41 U.S.L.W. 4796 (1973) (Education. Proof of residence for entitlement to in-state fee rates); *Morrissey* v. *Brewer*, 408 U.S. 471 (1973) (Parole. Revocation of parole without hearing); *Stanley* v. *Illinois*, 405 U.S. 645 (1972) (Child custody. Father denied custody without fitness hearing); *Bell* v. *Burson*, 402 U.S. 535 (1971) (Driver's license. Uninsured motorist's driver's license suspended without hearing unless security posted following accident); *Wisconsin* v. *Constantineau*, 400 U.S. 433 (1971) (Reputation. Public posting of notice person not to be sold liquor); *Goldberg* v. *Kelly*, 397 U.S. 254 (1970) (Welfare benefits. Welfare benefits terminated without prior notice and hearing); *Smiadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969) (Wages. Wages garnisheed without notice or opportunity to defend); *Slochower* v. *Board of Education*, 350 U.S. 551 (1956) (Public employment. Teacher discharged without notice and hearing.)

When presented with an allegation that due process has been denied, the Court must first determine whether the interest left unprotected falls within the ambit of a liberty or property within the meaning of the Fourteenth Amendment. This is an inquiry into the *nature* of the interest at stake, not its *weight*. If it is a protected interest, the Court then looks at the weight of the interest and the extent of its deprivation to determine what process is due. *Board of Regents* v. *Roth*, 408 U.S. 564, 570-571 (1972); *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972).

The concept of liberty includes

> not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.
> *Meyer* v. *Nebraska*, 262 U.S. 390, 399 (1923).

Those interests included within the concept of liberty are not limitless, but the United States Supreme Court has recognized that

> In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed. *Board of Regents* v. *Roth*, 408 U.S. *supra* at 572. [citations omitted]

The Supreme Court has not resolved the question of whether a student's statutory right[14] to an education is a liberty which is protected by due process of law. The Supreme Court has frequently referred to the importance of education in the American system of government. In *Brown* v. *Board of Education* the Court noted that:

> education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later

[14]In Ohio primary and secondary education is given free to all school district residents between the ages of six and 21 years. Section 3321.01, Ohio Revised Code. School attendance is compulsory between the ages of six and 18 years. Section 3313.64, Ohio Revised Code.

professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. 347 U.S. 483, 493 (1954).

See, *San Antonio Independent School District* v. *Rodriguez*, ____ U.S. ____ 41 U.S.L.W. 4407, 4416 (1973); *Wisconsin* v. *Yoder*, 406 U.S. 205, 213 (1972); *Abington School District* v. *Schempp*, 374 U.S. 203, 230 (1963) (Brennan J., concurring); *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); *Meyer* v. *Nebraska*, 262 U.S. 390 (1923); *Williams* v. *Dade County School Board*, 441 F.2d 299, 302 (5th Cir. 1971); *Sullivan* v. *Houston Independent School District*, 333 F.Supp. 1149, 1172 (S.D. Tex. 1971); *Ordway* v. *Hargraves*, 323 F.Supp. 1155, 1158 (D. Mass. 1971); *Hosier* v. *Evans*, 302 F.Supp. 316, 319 (D. St. Croix 1970).

Recently in *San Antonio School District* v. *Rodriguez*, —— U.S. ——, 41 U.S.L.W. 4407 (1973) the Supreme Court was presented with the question of whether differential State aid to local school districts violates the equal protection clause of the Fourteenth Amendment. The Court, in determining whether the rational basis test, *United States* v. *Moreno*, —— U.S. ——, 41 U.S.L.W. 5105 (1973); *Gomez* v. *Perez*, —— U.S. —— 41 U.S.L.W. 4174 (1973); *United States* v. *Kras*, —— U.S. ——, 41 U.S.L.W. 4117 (1973); *Jefferson* v. *Hackney*, 406 U.S. 535, 546 (1971); *Weber* v. *Aetna Casualty & Surety Co.*, 406 U.S. 164, 172-173 (1972); *Richardson* v. *Belcher*, 404 U.S. 78, 81 (1971); *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970); *McGowan* v. *Maryland*, 366 U.S. 420, 426 (1961); *Morey* v. *Doud*, 354 U.S. 457, 465-466 (1957); *Williamson* v. *Lee Optical Co.*, 348 U.S. 483 (1955); *Gulf, Colorado & Santa Fe Ry* v. *Ellis*, 165 150 (1896); *Yick Wo.* v. *Hopkins*, 118 U.S. 356, 373-374

(1886), or the compelling state interest test, *Dunn* v. *Blumstein*, 405 U.S. 330, 342-343 (1972); *Shapiro* v. *Thompson*, 394 U.S. 618, 634, 638 (1969); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966); *Brown* v. *Board of Education*, 347 U.S. 483 (1954), should be applied to the legislative scheme, stated that the right to an education was not explicitly or implicitly guaranteed by the Constitution. Consequently, the Court applied the rational basis test, not the compelling state interest test. *San Antonio School District* v. *Rodriguez*, —— U.S. *supra at* ——, 41 U.S.L.W. *supra* at 4416.

The Supreme Court's holding that the right to an education is not explicitly or implicitly guaranteed by the Constitution does not affect the determination of whether it is a liberty or property which cannot be interfered with by the State without the protection of due procedural safeguards. As noted above, interests included within the concepts of liberty and property are often rights created by the State which have no Constitutional status.[15]

The question presented is whether the State created right to an education is a protected liberty under the Fourteenth Amendment's due process clause.[16]

Since the decision in *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir 1961) the lower federal courts have without exception recognized that a student has the due process right to notice and hearing prior to expulsion or suspension from school for a substantial period of time. *Woods* v. *Wright*, 334 F.2d 369

[15]See, pp 30-31, *supra*.

[16]The right to an education is not an interest traditionally considered to be within the concept of "property", even though an education undoubtedly has an economic as well as an intangible value. However, governmental entitlements in our modern society often take on the incidents of property. *See generally*, Reich, *The New Property*, 73 YALE L.J. 733 (1964).

(5th Cir. 1964); *Esteban* v. *Central Missouri State College* 415 F.2d *supra* at 1089; *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195, 200 (6th Cir. 1969), *cert. denied*, 399 U.S. U.S. 906 (1970); *Williams* v. *Dade County School Board*, 441 F.2d 299, 301-302 (5th Cir. 1971); *Esteban* v. *Central Missouri State College*, 277 F. Supp. 649, 651-652 (W.D. Mo. 1967); *Jones* v. *State Board of Education of Tennessee*, 279 F.Supp. 190, 198 (M.D. Tenn. 1968), *affirmed*, 407 F.2d 834 (6th Cir. 1969) *cert. dismissed as improvidently granted* 397 U.S. 31 (1970), *rehearing denied*, 397 U.S. 1018 (1970); *Stricklin* v. *Regents of the University of Wisconsin*, 297 F.Supp. 416 (W.D. Wisc. 1969); *Sullivan* v. *Houston Independent School District*, 307 F.Supp. 1328, 1337 (S.D. Tex. 1969); *Hobson* v. *Bailey*, 309 F.Supp. *supra* at 1401-1402; *Sullivan* v. *Houston Independent School District*, 333 F.Supp. 1149 (S.D. Tex. 1971); *DeJesus* v. *Penderthy*, 344 F.Supp. 70, 74-75 (D. Conn. 1972). Although suspension from school for a short period of time as opposed to a lengthy suspension or expulsion is a lesser interference with the right to education, the due process clause of the Fourteenth Amendment still cloaks the student. *Tate v. Board of Education of Jonesboro Arkansas*, 453 F.2d *supra* at 979; *Farrell* v. *Joel*, 437 F.2d 160, 162 (2d Cir. 1971); *Esteban* v. *Central Missouri State College*, 415 F.2d *supra* at 1089; *Madera* v. *Board of Education of the City of New York*, 386 F.2d 778, 784-785 (2d Cir. 1967). No Court faced with the question has held that the right to an education is not within the concept of "liberty".

It is important to remember that even though the interference with the liberty of a right to education is limited, the student's right treated with procedural fairness prior to a deprivation of the right to an education

is not lost. The magnitude of the deprivation affects the formality and comprehensiveness of the due process safeguards; it does not affect the basic fact that these safeguards shield the student from arbitrary or capricious interference with his right to education. In *Board of Regents* v. *Roth*, 408 U.S. 564, 470-571 fn. 7 and 8 Justice Blackmun discussed the applicability of procedural due process to protected Fourteenth Amendment liberties:

> Before a person is deprived of a protected interest, he must be afforded opportunity for some kind of a hearing 'except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event'. *Boddie* v. *Connecticut*, 401 U.S. 371, 379. While '[m]any controversies have raged about . . . the due process clause' . . . it is fundamental that except in emergency situations (and this is not one) due process requires that when a state seeks to terminate [a protected] interest . . ., it must afford 'notice and opportunity for hearing appropriate to the nature of the case' *before* the termination becomes effective *Bell* v. *Burson*, 402 U.S. 535, 542. For the rare and extraordinary situations in which we have held that deprivation of a protected interest need not be preceded by opportunity for some kind of a hearing, *See e.g., Central Union Trust Company* v. *Garvan*, 254 U.S. 554, 566; *Phillips* v. *Commissioner*, 283 U.S. 589, 597; *Ewing* v. *Mytinger and Casselbery, Inc.*, 339 U.S. 594.
>
> . . .
>
> Formality and procedural requisites of a hearing vary with the relative importance of interests involved and the nature of the subsequent proceedings. *Boddie* at 378. But the constitutional requirement of opportunity for *some* form of hearing before deprivation of a protected interest, of course,

does not depend upon such a narrow balancing process.

If education is a protected liberty when expulsion is involved, then it remains a liberty when suspension occurs. The right to an education is the interest being afforded procedural protection. It either is, or is not a liberty under the Fourteenth Amendment. The difference between expulsion and suspension becomes important only when the Court confronts the question of what process is due to protect the Fourteenth Amendment liberty.

Considering the importance of education in our society today, the Court HOLDS that the State created entitlement to an education is a liberty protected by the due process clause of the Fourteenth Amendment.

The Court now turns to the more difficult question of what process is due a student before the State may deprive him of his right to an education by imposing a suspension not to exceed 10 days.

The primacy of the educator in the school has been unquestioned by the Courts. The Courts have consistently reaffirmed the right of school administrators to manage their school systems without interference from the Courts, so long as the basic commands of the Constitution are honored.

The Courts have repeatedly emphasized the need for affirming the comprehensive authority of the states and of school officials consistent with fundamental constitution safeguards, to prescribe and control conduct in the schools. *Tinker* v. *DesMoines School District*, 393 U.S. 503, 507 (1969). *See also, Epperson* v. *Arkansas*, 393 U.S. 97, 104 (1968); *Bright* v. *Nunn*, 448 F.2d 245 (6th Cir. 1971); *Robinson* v. *Board of Regents*, No. 72-1867 (6th Cir. March 28, 1973); *Tate* v. *Board of Education of Jonesboro, Blackwell* v. *Issaquena City Board of Education*, 363 F.2d 749, 753 (5th Cir 1966); *Jackson* v. *Dorrier*, 424 F. 2d 213, 218-219 (6th Cir. 1970), *cert. denied*, 400 U.S. 950 (1970); *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195 (6th Cir. 1969); *Banks* v. *Board of Public Instruction of Dade County*, 314 F.Supp. 285, 289 (S.D. Fla. 1970), *affirmed*, 450 F.2d 1103 (5th Cir. 1971) *vacated to permit timely filing of appeal*, 401 U.S. 988 (1971).

The Courts have vigorously asserted the right, and indeed the duty of school administrators to prohibit student behavior which materially disrupts classwork, endangers property or interferes with the rights of other students. *Tinker* v. *Des Moines School District*, 393 U.S. *supra* at 513; *Soglin v. Kauffman*, 418 F.2d 163, 167 (7th Cir. 1969); *Esteban* v. *Central Missouri State College*, 415 F.2d 1077, 1087 (8th Cir. 1969); *Gardenhire* v. *Chalmers*, 326 F.Supp. 1200, 1202 (D. Kan. 1971); *Hobson* v. *Bailey*, 309 F. Supp. 1393, 1400 (W.D. Tenn. 1970); *General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Learning*, 45 F.R.D. 133, 141 (W.D. Mo. *en banc* 1968). Remembering that school officials are better suited to make decisions affecting their institutions, the Court nonetheless is Constitutionally bound to insure that the student be afforded the minimum procedural process mandated by the Constitution.

The nature of the due process protection of the right of education is dependent on the severity of the sanction. *Tate* v. *Board of Education of Jonesboro Arkansas*, 453 F.2d *supra* at 979; *Farrell* v. *Joel*, 437 F.2d *supra* at 162; *Jackson* v. *Hepinstall*, 328 F.Supp. 1104, 1106 (N.D. N.Y. 1971); *Rumler* v. *Board of School Trustees for Lexington County*, 327 F. Supp. 729, 744 (D. S.C. 1971), *affirmed* 437 F.2d 953 (4th Cir. 1971); *Gardenhire* v. *Chalmers*,

326 F. Sup., *supra* at 1203. When the sanction is a short suspension as opposed to a lengthy suspension or expulsion, more informal procedures may be adopted by school authorities who make the disciplinary determination. *Tate* v. *Board of Education of Jonesboro Arkansas*, 453 F.2d *supra* at 979; Farrell v. Joel, 437 F. 2d *supra* at 163; *DeJesus* v. *Penberthy*, 344 F.Supp *supra* at 74; *Jackson* v. *Hepinstall*, 328 F.Supp. *supra* at 1106; *Rumler v. Board of School Trustees for Lexington County*, 327 F. Supp. *supra* at 744; *Schwartz* v. *Schuker*, 298 F.Supp. 239 (E.D. N.Y. 1969).

All courts which have considered the problem have recognized the authority of school administrators to suspend students for a short period without a hearing if an emergency situation requires the removal of the disruptive student from the school to restore an academic atmosphere. *Williams* v. *Dade County School Board*, 441 F.2d *supra* at 301; *Sullivan* v. *Houston Independent School District*, 333 F.Supp. *supra* at 1172; *Gardenhire* v. *Chalmers*, 326 F.Supp. *supra* at 1205; *Banks* v. *Board of Public Instruction of Dade County*, 314 F.Supp. *supra* at 291-292; *Hobson* v. *Bailey*, 309 F.Supp. *supra* at 1400; *Buck* v. *Carter*, 308 F.Supp. 1246, 1249-1250 (W.D. Wisc. 1970); *Stricklin* v. *Regents of the University of Wisconsin*, 297 F.Supp. *supra* at 420.

Due process is not a straitjacket imposed by the Courts upon educators. The minimum requirements of notice and a hearing prior to suspension, except in emergency situations, does not require inflexible procedures. Court must be mindful not to require educators to follow specific or particular procedural frameworks. Due process is satisfied if the procedures are "reasonably calculated to be fair to the student and lead to a reliable determination of the factual issues involved." *Gardenhire* v. *Chalmers*, 326 F.Supp. *supra* at 1202-1203. As the

District Court stated in *DeJesus* v. *Penberthy*, 344 F.Supp. *supra* at 74:

> School authorities must be given discretion within wise limits to find facts and assess their significance. Their knowledge of the context within which discipline problems arise entitles their judgment to be accorded great weight. On the other hand, there is less reason to accord such authorities as much discretion in fashioning procedures. However flexible the contours of due process may be in the ascertainment of the outer limits is a judicial function under the Fourteenth Amendment. Of course, school authorities must have some discretion in developing fair procedures. Hopefully, they will not assume that the minimum requirements of the due process clause as determined by the courts are all that they, as school administrators, should determine to accord students as a matter of sound educational policy.

The Fourteenth Amendment due process requirement of notice in a hearing are "nothing more than fair play." *Banks* v. *Board of Public Instruction of Dade County*, 314 F. Supp. *supra* at 291. If school administrators follow procedures which result in a fair factual determination made after notice and an opportunity to defend against the charges of misconduct, then no matter how informal the procedure, the student has been accorded the minimum requirements of the due process clause of the Fourteenth Amendment of the Constitution of the United States.

The decisions which have dealt with the subject in the composite provide that a minimum procedural fairness requires:

1. Immediate removal of a student whose conduct disrupts the academic atmosphere of the school, endangers fellow students, teachers or school officials, or damages property.

2. Immediate written notice to the student and parents of the reason(s) for the removal from school and the proposed suspension should be given within 24 hours.
3. Not later than 72 hours after the actual removal of the student from school, the student and his parents must be given an opportunity to be present at a hearing before a school administrator who will determine if a suspension should be imposed.

   Such hearing, which is not a judicial proceeding, must provide at a minimum

   (a) Statements in support of the charge(s) against the student upon which the hearing is conducted.

   (b) Statements by the student and others in defense of the charge(s) and/or in mitigations or explanation of his conduct.

   (c) The administrator is not required to permit the presence of counsel or follow any prescribed judical rules in conducting the hearing.

   (d) The administrator should, within 24 hours advise the student and his parents by letter of his decision and the reasons therefor.

School administrators are free to adopt regulations providing for fair suspension procedures which are consonant with the educational goals of their schools and reflective of the characteristics of their school and locality. There is no one way to insure fairness in the suspension process. The choice of the best procedure for a particular school system should be left to the school officials charged with the administration of that school system.

In the present case plaintiffs were not accorded a hearing. The conference required by school regulations following suspension was not a fact-finding hearing, but

rehabilitative in nature. None of the named plaintiffs were in fact afforded even this conference. There is no evidence in the record that any of the plaintiffs voluntarily relinquished their right to a hearing.

The Court HOLDS that plaintiffs were not accorded due process of law, in that they were suspended without hearing prior to suspension or within a reasonable time thereafter.[17]

The Court ORDERS that references to the suspensions of plaintiffs or members of their class be removed from all records of the Columbus Public Schools.

VAGUENESS AND OVERBREADTH

Plaintiffs contend that the disciplinary regulations under which they were suspended are void because they are unconstitutionally vague and overbroad. *See, e.g., Baggett* v. *Bullit*, 377 U.S. 360, 367-378 (1964); *Champlinsky* v. *New Hampshire*, 315 U.S. 568, 573 (1942); *Lanzetta* v. *New Jersey*, 306 U.S. 451, 453 (1939); *Grayned* v. *City of Rockford*, 408 U.S. 104, 114-115 (1972); *Zwickler* v. *Koota*, 389 U.S. 241, 249-250 (1967).

The concepts of vagueness and overbreadth are safeguards against governmental intrusion upon First Amendment rights. *See, Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 168 (1973). Plaintiffs have failed to prove that their conduct at the time of their suspensions was entitled to First Amendment protection. On the contrary, the evidence establishes that the various school administrators acted to restore order and discipline in their schools. In such circumstances, the action of school

[17]This holding does not reflect upon the wisdom or propriety of the suspensions themselves. Phillip Fulton's testimony fully supports the suspensions he imposed. However, the Court does not review the appropriateness of the suspension. The limited issue is whether the procedure employed met the minimum standards of due process. The Court holds that it did not.

administrators do not contravene the First Amendment. *See, Norton v. Discipline Committee of East Tennessee State University*, 419 F.2d *supra* at 200; *Esteban* v. *Central Missouri State College*, 415 F.2d *supra* at 1088; *Banks* v. *Board of Public Instruction*, 314 F.Supp. *supra* at 290; *Jones* v. *State Board of Education*, 279 F.Supp. *supra* at 202.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

Civil Action No. 71-67

Eileen Lopez, et al.,

Plaintiffs,

vs.

Herbert M. Williams, et al.,

Defendants

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby granted that Norval Goss, James Furgason, James Boster, John Mulherin, John Ellis, The Columbus Board of Education, Virginia Prentice, Thomas Moyer, Marilyn Redden, Paul Langdon, David Hamlar, Marie Castleman and Watson Walker, defendants named in the above case, hereby appeal to the Supreme Court of the United States from the final judgment, declaring Section 3313.66 of the Ohio Revised Code unconstitutional entered in this action on September 17, 1973.

This appeal is taken pursuant to 28 U.S.C. §1253.

THOMAS A. BUSTIN, *Trial Attorney*
90 West Broad Steet
Columbus, Ohio 43215
Phone: 614/461-7460

PROOF OF SERVICE

I, Thomas A. Bustin, one of the attorneys for appellants, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ——

day of ————, 1973, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on plaintiffs by mailing a copy thereof, postage prepaid, to:

Denis J. Murphy
8 East Broad Street
Columbus, Ohio 43215
Kenneth C. Curtin
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Columbus, Ohio 43209
I. W. Barkan
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Columbus, Ohio 43215
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[redacted]

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, et al.,
Appellants.

v.

EILEEN LOPEZ, ETC., et al.,
Appellees.

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

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Civil Action No. 71-67

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

EILEEN LOPEZ, et al.,

Plaintiffs,

v.

HERBERT M. WILLIAMS, et al.,

Defendants.

RELEVANT DOCKET ENTRIES

3–31–71	Complaint filed. Summons Issued to M SDO
4–19–71	Memorandum Contra Motion that Three Judge Panel Hear Motion for Temporary Restraining Order, filed
4–19–71	Defendants Motion to Dismiss filed
9–27–71	Opinion—Plaintiff's Application for Convening of Three Judge Court is Meritorious, filed. Copy to Counsel
10– 4–71	Designation filed Members of the Court; Judge John W. Peck, USCJ, Judge Joseph P. Kinneary, USDJ and Judge Carl B. Rubin, USDJ. Copies of all Pleadings Sent to the Members of the Court. Copies of the Designation to all Counsel
4– 7–72	Answer filed (Sxtra Copies filed)

10–10–72 Stipulations of Fact filed by Plaintiffs

1–26–73 Stipulation of the Parties, filed. Copies to 3 Judges

5–25–73 Motion, Memo Aattached by Defts. for an Order Striking all Stipulations

7–13–73 Deposition of John Ellis and Phillip Fulton filed

7–16–73 Note: Oral Hearing Had Before Hon. Joseph P. Kinneary, Chief Judge

7–16–73 Exhibits Made a Part of this Record

7–17–73 Motion of all Defendants to Dismiss filed, With Memo Attached

8–21–73 Plaintiff's Motion for Substitution and Addition of Parties filed

8–31–73 Amended Complaint, filed

9–12–73 Answer on Behalf of Substitute Parties Norval Goss, James Furgason, James Boster, John Mulherin, John Ellis, Virginia Prentice, Thomas Moyer, Marilyn Redden, Marie Castleman, David Hamlar, Paul Langdon, and Watson Walker filed

9–12–73 Opinion filed (CMT Barker / Murphy / Curtin / Roos / Cit yAtty's. OFC Panel)

9–12–73 Order filed in Conjunction With the Opinion, This Declares That Section 33.13.66 of ORC and the Regulations of the Columbus Public Schools are UNCONSTITUTIONAL in That They Suspend Students Before a Hearing (Due Process of Law); it is ORDERED That

the Defendants Delete all References to the Suspensions and Disciplinary Transfers of Plaintiffs From the Records of the Columbus Public Schools.
(Cmt Barkan / Murphy / Curtin / Roos / City Atty's OFC / panel)

9–17–73 Judgment filed: re the Above Separate Opinion and Separate Order.
(Cmt. Barkan / Murphy / Curtin / Roos / City Atty's OFC / Panel)

11– 9–73 Notice of Appeal to the Supreme Court of the United States filed.
(Cmt. I. W. Barkan / Denis Murphy / Eric VanLoon / Kenneth Curtin)

11–28–73 Request for Certification of Record Pursuant to Rule 12 of the United States Supreme Court Rules filed

12–19–73 Record Certified to the United States Supreme Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. 71-67

Mrs. Eileen Lopez,
parent and next friend
of Dwight A. Lopez, a minor
1112 Melter Avenue
Columbus, Ohio 43206
and
Mrs. Martha Jean Adams, as
parent and next friend of
Betty Jean Crome, a minor
1666 E. 25th Street
Columbus, Ohio 43219
and
Mr. Floyd Sutton, as
parent and next friend
of Rudolph R. Sutton, a minor
2949 Fairwood
Columbus, Ohio
and
Mrs. Dollie Vance, as
parent and next friend of
Tyrone Washington, a minor
1588 Burley Drive
Columbus, Ohio
and
Mrs. M. Katherine Cooper, as
parent and next friend
of Susan C. Cooper, a minor
1576 Koebel Court
Columbus, Ohio
and

Mrs. Delores Young, as
parent and next friend of
Deborah Kay Fox, a minor
3351 Southhampton Dr. E.
Columbus, Ohio
and
Mrs. Barbara Byars, as
parent and next friend
of Clarence L. Byars, a minor
1492 Venice Drive
Columbus, Ohio
and
Mrs. Veda Smith, as
parent and next friend of
Carl Smith, a minor
2295 Vadis
Columbus, Ohio
and
Mr. Freddie Robinson, as legal
guardian and next friend of
Bruce Harris, a minor
1456 Wayland Drive
Columbus, Ohio
on behalf of themselves and all
others similarly situated

Plaintiffs,

vs.

Herbert M. Williams, individually
and as Director of the Department
of Pupil Personnel of the
Columbus Public Schools
270 East State Street
Columbus, Ohio 43215
and

Calvin Park, individually and
as Principal of Central High
75 Washington Boulevard
Columbus, Ohio 43215
and
Philip F. Fulton, individually
and as Principal of
Marion-Franklin High School
1265 Koebel Road
Columbus, Ohio 43207
and
Frank D. Mason, individually
and as Principal of
McGuffey Junior High School
2632 McGuffey Road
Columbus, Ohio 43211
and
Harold H. Eibling, as
Superintendent of the
Columbus Public Schools
270 East State Street
Columbus, Ohio 43215
and
THE COLUMBUS BOARD OF EDUCATION
270 East State Street
Columbus, Ohio 43215

Defendants.

COMPLAINT

1. This is an action for injunctive and declaratory relief authorized by Title 42 U.S.C. Section 1983 to secure rights, privileges and immunities established by the First and Fourteenth Amendment to the Constitution of the United States.

JURISDICTION

2. The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1343(3) providing for original jurisdiction of this Court in suits authorized by Title 42 U.S.C. Section 1983 and under Title 28 U.S.C. Sections 2201 and 2202 relating to declaratory judgments.

3. Plaintiffs respectfully request that a three-judge Court be convened pursuant to Title 28 U.S.C. Section 2281 in that plaintiffs seek to enjoin the enforcement of State Statute by an officer of the State on the grounds that said statute and its implementation violate the Constitution of the United States.

CLASS ACTION

4. Plaintiffs bring this action on their own behalf and on behalf of all other students residing in the City of Columbus who are similarly situated and affected by the policy and usage complained of herein. The members of the class on whose behalf plaintiffs sue are so numerous as to make it impracticable to bring them all individually before this Court. There are common questions of law and fact involved and plaintiffs' claim is typical of the claim of the entire class. Plaintiffs fairly and adequately represent and will protect the interest of the class. Defendants have acted on grounds generally applicable to plaintiffs' class. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

DEFENDANTS

5. Defendant Herbert M. Williams is and was at all times material hereto the Director of the Department of Pupil Personnel of the Columbus Public Schools.

6. Defendant Calvin Park is and was at all times material hereto the Principal and Chief Administrative officer of Central High School.

7. Defendant Philip E. Fulton is and was at all times material hereto the Principal and Chief Administrative officer of Marion-Franklin High School.

8. Defendant Frank D. Mason is and was at all times material hereto the Principal and Chief Administrative officer of McGuffey Junior High School.

9. Defendant Harold H. Eibling is and was at all times material hereto Superintendent of Schools of the Columbus Public Schools and is the executive and administrative officer of the Columbus Board of Education pursuant to Section 3301.11 of the Ohio Revised Code.

10. Defendant Columbus Board of Education is and was at all times material hereto entrusted with the management and control of all matters relating to the Columbus Public Schools pursuant to Chapter 3313 of the Ohio Revised Code.

CLAIM OF DWIGHT LOPEZ

11. Mrs. Eileen Lopez is the parent and natural guardian of Dwight Lopez, a minor, 19 years of age on whose behalf she has filed suit. Dwight Lopez is in the 12th grade at Central High School.

12. Lopez was suspended without prior hearing on the 26th of February by defendant Calvin Park, principal Central High School. Lopez was advised of the suspension in writing by a letter mailed to him and received February 27, 1971. No return date was fixed in his suspension. On March 1, 1971 Mr. and Mrs. Lopez were advised that they would have to appear at the Board of Education before Dwight Lopez could return to school.

13. On March 5, 1971 the School Board acting through defendant Herbert M. Williams delivered a let-

ter to Mr. and Mrs. Lopez advising them to appear March 8, 1971 at 8:30 A.M. Because of a demonstration being conducted at the Board of Education offices that morning neither Dwight or Mr. and Mrs. Lopez appeared at the Board as scheduled. No new date has been fixed for appearance before the Board. Dwight Lopez has not been advised of the complete and specific reasons for his suspension, and no hearing has been held concerning being readmitted to Central High School, and he is being denied an opportunity to continue his education there.

14. Following March 8, 1971 Mrs. Lopez called the School Board on several occasions, as did her daughter, Alma Robinson, but no new date was set for hearing. Mrs. Robinson thereafter wrote to the School Board on March 22, 1971 and by letter dated March 25, 1971 received March 26, 1971 from defendant, H. M. Williams, Mrs. Lopez was advised that since Dwight had missed his appointment March 8, 1971 and had made no attempt to make a new appointment, he was granted permission to report to the adult day school at Nelson Road.

15. To the date of the filing of this Complaint no hearing has ever been held in Dwight Lopez's case and he has not been advised in writing the reason for his suspension or expulsion from the regular day school of Central High School.

CLAIM OF BETTY JEAN CROME

16. Mrs. Martha Jean Adams is the parent and natural guardian of Betty Jean Crome, a minor, 13 years of age.

17. Betty Jean Crome was suspended from school by defendant Frank Mason, principal of McGuffey Junior High School. The plaintiff Betty Jean Crome was suspended from McGuffey Junior High School, where she is a student in the 7th grade on the 8th day of March,

1971 without prior hearing. Betty Jean Crome was advised that she was to report to school with her mother on March 15, 1971. Mrs. Adams was unable to be with her daughter on readmission however and that requirement was relaxed.

18. Betty Jean Crome was readmitted to school on the 15th day of March and no hearing was held on the reasons for suspension and said suspension has become part of her permanent school record.

CLAIM OF RUDOLPH R. SUTTON

19. Floyd Sutton is the parent and natural guardian of Rudolph Sutton, a minor 19 years of age on whose behalf he has filed suit. Rudolph Sutton is a student at Marion-Franklin High School in the 12th grade.

20. Rudolph Sutton was suspended from school on the 15th day of March, 1971 for a period of 10 days. By letter dated March 16, 1971 Rudolph Sutton was notified that he was suspended until March 25, 1971 and that the Pupil Personnel Department would notify him of further disposition of his case in a letter sent by Oscar Gill acting for the defendant Fulton principal of Marion-Franklin High School.

21. No hearing was ever held in the Sutton case and on the 25th day of March upon returning to Marion-Franklin, Rudolph Sutton, and his mother who accompanied him, were advised that they would receive a letter in the mail concerning his case.

22. A letter dated that March 25, 1971 advised Mr. and Mrs. Sutton that their son was "to report to South High School for balance of 1970-71 school year. (adjustment)" The letter was signed by defendant H. M. Williams, Director Pupil Personnel. Plaintiff Rudolph Sutton has never requested a transfer from Marion-Franklin High School and no hearing or reason in writing were

given to Sutton prior to said notice of transfer. Rudolph Sutton believes said suspension have become part of his permanent school record.

CLAIM OF TYRONE WASHINGTON

23. Mrs. Dollie Vance is the parent and natural guardian of Tyrone Washington, a minor 18 years of age on whose behalf she has filed suit.

24. Tyrone Washington on the 15th day of March, 1971 was a student at Marion-Franklin High School from which he was suspended for a period of ten days. In a letter dated March 16, 1971 the parents of Tyrone Washington were advised of the suspension and that "The Pupil Personnel Department of the Columbus Board of Education will notify you concerning a disposition of your case". No hearing was held prior to or subsequent to suspension.

25. By letter dated March 23, 1971 Tyrone Washington parents were notified that he had been summarily transferred to Mohawk Junior High School for the balance of the school year. No transfer had been requested and no hearing has been held concerning said transfer. Tyrone Washington believes said suspension and transfer has become a permanent part of his school record.

CLAIM OF SUSAN C. COOPER

26. Mrs. M. Katherine Cooper is the parent and natural guardian of Susan C. Cooper, a minor 16 years of age on whose behalf she has filed suit. Susan C. Cooper is a student at Marion-Franklin High School.

27. Susan Cooper was suspended from school without prior hearing for a period of ten days on March 15, 1971. On March 17, 1971 Mrs. Katherine Cooper received a letter from Oscar R. Dill acting on behalf of the defendant Fulton, principal of Marion-Franklin High School. No hearing was held prior to March 25, 1971 concerning

said dismissal. By letter of March 16, 1971 Mrs. Cooper was advised of an 11:00 A.M. conference in Mr. Gill's office on the date of Susan's return. Susan Cooper believes said suspension will become part of her permanent record.

CLAIM OF DEBORAH KAY FOX

28. Mrs. Delores Young is the parent and natural guardian of Deborah Kay Fox, a minor 16 years of age on whose behalf she has filed suit. Deborah Kay Fox is a student at Marion-Franklin High School in the 10th grade.

29. On the 10th day of March, 1971 Deborah Kay Fox was suspended from school without prior hearing for a period of ten days. On the 11th day of March, 1971 Mr. and Mrs. William Young were advised of the suspension of Deborah Kay Fox until Friday, March 19, 1971. On March 19, 1971 when she attempted to return to school, Deborah Kay Fox was suspended until March 29, 1971 or "until contacted by Mr. Robert Carter or his representative regarding your daughter's school placement". Miss Fox was advised personally by Mr. Kollmer, as agent for the defendant Fulton that she was not to return to Marion-Franklin.

30. No hearing has ever been held concerning said suspension and neither Deborah Kay Fox or her parents have ever requested a transfer. Miss Fox believes the suspensions she has received have become a permanent part of her school record. Miss Fox was advised on March 29th that she has been transferred to South High School.

CLAIM OF CLARENCE L. BYARS

31. Mrs. Barbara Byars is the parent and natural guardian of Clarence L. Byars, a minor 16 years of age. Clarence L. Byars is in the 11th grade at Marion-Franklin High School.

32. On the 15th of March, 1971, Clarence L. Byars was suspended from school for a period of 3 days. On the 17th day of March, 1971 the parents of Clarence L. Byars were advised that Clarence was suspended and that he was to return to school on the 18th day of March, 1971. No hearing was held prior to his suspension and Clarence Byars was not informed in writing of the reasons for his suspension until two days after it occurred and was never given an opportunity to contest said suspension. Clarence L. Byars believes said suspension will become part of his permanent school record.

CLAIM OF CARL SMITH

33. Mrs. Veda Smith is the parent and natural guardian of Carl Smith, a minor, 18 years of age on whose behalf she has filed suit. Carl Smith is a student in the 12th grade at Central High School. Carl Smith was suspended from Central High School by the defendant Calvin Park, principal, on the 26th day of February, 1971. Smith was advised of suspension on February 27, by letter. No definite date of return was given to the plaintiff Smith and he has been permitted to be in school only on one day since his suspension, March 9, 1971. Smith has been advised that he may not return to school until he talks to someone at the School Board, no hearing has been held in his case since suspension February 26, 1971. Carl Smith continues to be denied an opportunity to complete his schooling.

CLAIM OF BRUCE HARRIS

34. Freddie Robinson is the legal guardian and next friend of Bruce Harris on whose behalf he has filed suit. Bruce Harris is a minor, 18 years of age and a student in the 12th grade at Marion-Franklin High School.

35. On the 22nd day of March, 1971, Bruce Harris was suspended from Marion-Franklin High School by Oscar

Gill, Assistant Principal. No hearing was held prior to his suspension and Harris was advised of the suspension by letter received March 24th, 1971. The letter advised Harris he was suspended until March 30, 1971 and that during the suspension "the Pupil Personnel Department of the Columbus School Board will review with you the contents of the letter of November 6, 1970".

36. When Harris returned to school on March 30, 1971, he was not readmitted and advised to make contact with the Pupil Personnel Department.

37. Harris remains out of school and believes said suspension will become part of his school record.

38. Defendants have acted pursuant to Section 3313.66 of the Ohio Revised Code, the Administrative Guide of the Columbus Public Schools, and the Policy Statement in Discipline of the Columbus Public Schools none of which provides any standards for the exercise of school administrator's disciplinary authority or fair proceedings through which a student has an opportunity to challenge the proposed disciplinary measure.

39. On information and belief, there are no other school rules or regulations relied upon by defendants as authorized aforesaid disciplinary actions.

40. Under color of State law Defendants have acted intentionally, deliberately, and knowingly in violation of the First and Fourteenth Amendments to the Constitution of the United States and Title 42 U.S.C. Section 1983, rendering defendants liable to plaintiffs in law and equity.

CAUSE OF ACTION

41. Section 3313.66 of the Ohio Revised Code, Section 1010.04 of the Administrative Guide of the Columbus Public Schools, and the Columbus Policy Statement in Discipline provide no ascertainable standards of conduct for violation of which high school students may be

suspended and expelled. Said statute, administrative Guide, and Policy Statement are unconstitutional because their vagueness and overbreadth deprive students of rights secured under the First and Fourteenth Amendments to the Constitution of the United States.

42. Section 3313.66 of the Ohio Revised Code Section 1010.04 of the Administrative Guide of the Columbus Public Schools, and the Columbus Policy Statement in Discipline authorize the suspension and expulsion of high school students without prior notice and a hearing with such minimal rights as a written statement of the reasons for the proposal discipline, the right to cross-examination, the right to pre-hearing discovery procedure, the right to submit relevant evidence and the right to be represented by counsel. Said statute, administrative Guide, and Policy Statement are unconstitutional because their lack of procedural safeguards deprives students of rights secured under the Fourteenth Amendments to the Constitution of the United States.

43. In the instant case defendants have effected suspensions, expulsions, and involuntary transfers of students without prior hearings which comport with minimal standards of due process. Defendants actions have been arbitrary, unequal and discriminatory in violation of plaintiffs rights secured by the First and Fourteenth Amendments to the Constitution of the United States.

PRAYER FOR RELIEF

44. Wherefore, plaintiffs respectfully pray that this Court:

(1) Assume jurisdiction of this cause and convene a three-judge district Court to determine the controversy pursuant to Title 28 U.S.C. Section 2281.

(2) Enter a preliminary and a final order pursuant to Title 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that Section 3313.66 of the Ohio Revised Code is unconstitutional.

(3) Enter a preliminary and a final order pursuant to Title 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the administrative Guide and the Policy Statement on Discipline of the Columbus Public Schools insofar as they relate to suspensions and expulsions are unconstitutional.

(4) Issue a preliminary and a permanent injunction restraining the defendant, their successors in office, agents and employees from further enforcement of the unconstitutional provisions of their discipline policy and Section 3313.66 of the Ohio Revised Code.

(5) Issue a preliminary and a permanent injunction ordering that plaintiffs' school records be expunged of any notation of the aforementioned suspensions and that plaintiffs be allowed to make up any school work or tests occurring during their absence from school.

(6) Maintain jurisdiction of this cause until such time as defendants establish a hearing procedure in conformity with the requirements of the Fourteenth Amendment to the Constitution of the United States.

(7) Award plaintiffs their costs and disbursements incurred herein together with such further alternative relief as may seem just and equitable.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION
(Title omitted in printing)
Civil Action 71-67

MOTION TO DISMISS

Now come defendants and move this Honorable Court for an order dismissing plaintiffs' complaint for the reasons that:

1. The complaint in its present form does not allege facts upon which relief can be granted under Title 42, U.S.C.A., Section 1983.

2. The Court lacks jurisdiction to grant plaintiffs' request for a declaratory judgment under Title 28, U.S.C.A., Sections 2201 and 2202, for the reason that the complaint and facts recited therein fail to disclose the presence of a justiciable case or controversy with respect to the constitutional validity of Section 3313.66 of the Ohio Revised Code in that the facts recited do not demonstrate that the statute directly applies to these plaintiffs, or that their interests are adversely affected by the operation of the statute.

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MEMORANDUM IN SUPPORT OF MOTION

In the present case, as demonstrated by the complaint, plaintiffs bring their action under the Civil Rights Act of 1871, 42 U.S.C.A., Section 1983, and as a request for a declaratory judgment under 28 U.S.C.A., Sections 2201 and 2202, seeking to draw in question the constitutional validity of Section 3313.66 of the Ohio Revised Code.

The statute (Section 3313.66 of the Ohio Revised Code) which is claimed to be constitutionally invalid, provides as follows:

> "The superintendent of schools of a city or exempted village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school for not more than ten days. Such superintendent or executive head may expel a pupil from school. Such superintendent, executive head, or principal shall within twenty-four hours after the time of expulsion or suspension, notify the parent or guardian of the child, and the clerk of the board of education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent, or guardian, or custodian of a pupil so expelled may appeal such action to the board of education at any meeting of the board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester."

While the Ohio courts have not had an opportunity to consider the constitutional validity or lack thereof of the above quoted section, it is apparent from even a cursory reading and examination of the section that it does not

directly apply to the plaintiffs in this case, nor does it standing alone affect any constitutional right secured to these plaintiffs. In fact, the operation of the statute is directed not at these plaintiffs, either in a positive or negative manner, but instead is in the nature of a restriction placed upon the broad and comprehensive power traditionally possessed by defendants.

With respect to the first portion of this motion directed to the question of whether or not the complaint in its present form is sufficient to recite a cause of action cognizable under the provisions of Section 1983, it is important to examine the complaint in the context of the following principles which in substance govern the formulation of actions under Section 1983: (1) a person acting under color of law must engage in conduct, (2) which subjects the complaining party or parties to the deprivation of rights, privileges or immunities secured by the constitution and laws of the United States. *Sinchak v. Parente*, 262 F. Supp. 79, *Basista v. Weir*, 340 F.2d 74.

In applying the above principles, the meaning of the term "under color of law" is of particular significance. In *United States v. Classic*, 313 U.S. 299, 326, the term was defined in the following manner:

> "*Misuse of power, possessed by virtue of state law* and made possible only because the wrong-doer is clothed with the authority of state law, is action taken under color of state law." (Emphasis added)

In addition to the above principles and definition which has not been changed or abandoned, see *Monroe v. Pape*, 365 U.S. 167, equally important to the resolution of the first portion of this motion is the additional principle supported by a majority of the courts, namely, that a person seeking to invoke the Civil Rights Act

must plead highly specific facts in order to bring themselves within the framework of the act. Such a principle insures that a justiciable controversy will exist in fact before a federal court need intervene under the Civil Rights Act. *Dann v. Gazola*, 216 F.2d 709, *Powell v. Workmen's Compensation Bd. of State of New York*, 327 F.2d 131, *Sinchak v. Parente, supra, Pugliano v. Staziak*, 231 F. Supp. 347, *aff'd.* 345 F.2d 797, *Wayandt v. Masons Stores, Inc.*, 279 F. Supp. 283, *Crawford v. Lydick*, 179 F. Supp. 211, *aff'd.* 280 F.2d 426, and *Daly v. Peterson*, 278 F. Supp. 88. This principle is well stated in *United States v. Bolsinger*, 211 F. Supp. 199, wherein the court at page 201 pointed out:

> "In actions of this nature (under the Civil Rights Act) highly specific factual averments are required to defeat a motion to dismiss. General allegations when unsupported by the complaint read as a whole have been consistently rejected as insufficient." (Parenthetical material added)

It is clear from a review of the authorities at the present time that a school board and the local school officials possess historical inherent power with respect to the operation of the schools and conduct of students, and may exercise that power, absent the infringement of any specific constitutional right, without the necessity of conducting due process hearings comparable to those now required or adhered to in both the civil and criminal courts. In other words, a study of the cases in general will demonstrate that the cases have not imposed upon the school board or school officials the requirement that they conduct or utilize a formalistic type of hearing procedure or process prior to exercising their power with respect to the conduct and discipline of the students enrolled in the school. Absent the infringement of a sharply defined constitutional right, the only requirement imposed upon the school board or school officials is that they act in a reasonable fashion and that their decision not be an arbitrary one. *People v. University of Illinois*, 134 N.E.2d 635, *State, ex rel., Sherman v. Hyman*, 171 S.W.2d 822, *cert. den.* 319 U.S. 748, *Due v. Florida A. & M. University*, 333 F. Supp. 396, *Dixon v. Alabama State Board of Education*, 294 F.2d 150, and *Vermilion v. State*, 110 N.W. 736. The comprehensive authority discussed herein as possessed by the school board and school officials has recently received renewed recognition absent the infringement of a sharply defined constitutional right. This renewed recognition can be found in the cases of *Epperson v. Arkansas*, 393 U.S. 97, 104; 21 L. Ed. 228, 234; and *Tinker v. Des Moines Community School District*, 393 U.S. 503, 507; 21 L. Ed.2d 731, 738. A close and careful examination of the above cases and the line of cases of which the *Tinker* case, *supra*, forms a part, will disclose that the federal courts have intervened in the affairs of the local school board and school officials to strike down particular statutes or rules only in those cases where the statute or rule infringed upon a sharply defined and protected constitutional right. See, for example, the recent case of *Madera v. Board of Education of City of New York*, 267 F. Supp. 356, 386 F.2d 778, 784-785, *cert. den.* 390 U.S. 1028, wherein the concept of due process as it generally applies to student discipline and the right to counsel possessed by students was reviewed. The cases will be searched in vain for a case in which the federal courts have intervened in the operation of the local schools as it relates to the conduct and discipline of the students for the purpose of imposing upon the school board generally the requirement of a formalistic

type of due process hearing, absent the infringement of a sharply defined and protected constitutional right.

When the complaint is tested in light of the above cases and principles it is readily apparent that the complaint does not allege with preciseness and clarity such facts as demonstrate a misuse of power possessed by virtue of state law on the part of these defendants. Implied in the allegations of plaintiffs' complaint, including the conclusions set forth therein is the theory that defendants have denied plaintiffs' due process by apparently not providing them the formalistic type of due process hearing normally required in both the civil and criminal courts at the present time. Such an allegation of denial of due process did not comport with the normally accepted conception of due process. *Cafeteria Workers v. McElroy*, 367 U.S. 886, 6 L.Ed.2d 1230, 1235, 1236. Compare the complaint with the principles set forth in *Madera and Bolsinger* cases, *supra*. When the factual allegations are separated from the conclusions and the complaint viewed as a whole, a problem purely local in character appears.

In light of the above line of cases, and in light of the very recent case of *Davis v. Ann Arbor Public Schools*, 313 F. Supp. 1217, which reviewed some of these cases and the concept of due process in the general operation of the school, including the general action taken with respect to the conduct and discipline of the students the conclusion is clear that the weight of authority is to the effect that in the general operation of the school and in particular in the administration of discipline to the students absent the infringement of a sharply defined constitutional right, the concept of due process does not require a certain type structured or formalized hearing in order for the action taken to be valid. The

allegations of the subject complaint, particularly when it is noted that the statute challenged does not operate expressly with respect to the students nor does it operate or govern sharply defined constitutional rights, coupled with the additional fact that the complaint does not disclose that the local procedure is final, places the subject complaint within the framework of this line of cases and the theory announced. Based on the weight of that authority and on the fact that utilizing the principles and rules announced and set out above, it is clear that the subject complaint does not set forth such a particularized set of facts as should entitle these plaintiffs to invoke the shelter of the Civil Rights Act. Absent any allegation with respect to the validity of Section 3313.66 of the Ohio Revised Code, the subject complaint does not set forth facts sufficient to bring it within the framework of Section 1983. Stripped of the allegations with respect to the statute, the complaint does nothing more than set forth a conflict which has arisen in the daily operation of the school system which conflict does not show the presence of interference with sharply defined constitutional values. Absent the allegation with respect to the statute, a misuse of power cognizable under the Civil Rights Act does not exist within the framework of this complaint.

With respect to the second portion of the motion, examination of the complaint fails to disclose the presence of those allegations and facts necessary to support plaintiffs' request for relief by way of a declaratory judgment. In other words, the complaint in its present form does not disclose the presence of facts which demonstrate that plaintiffs are sufficiently affected by the statute (Section 3313.66 of the Ohio Revised Code) or its operation such as should warrant a federal court's

exercising its equity jurisdiction for the purpose of granting a declaratory judgment. In essence, when the complaint is read in light of the statute attacked, it is apparent that a justiciable controversy does not exist such as warrants either the convening of a three judge court or the determination by a single judge federal court of the constitutional validity of the statute. The principle involved in the resolution of the second portion of the motion is well set out in the case of *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450, 463; 89 L. Ed. 1725-1736, wherein the Supreme Court points out:

> "Only those to whom a statute applies and who are adversely affected by it can draw in question its constitutional validity in a declaratory judgment proceeding as in any other. *Marye v. Parsons*, 114 U.S. 325; 29 L. ed 205, 5 S. Ct. 932, 962; *Tyler v. Judges of Ct. of Registration*, 179 U.S. 405, 45 L. ed 252, 21 S. Ct. 206; *Turpin v. Lemon*, 187 U.S. 51, 60, 61, 47 L. ed 70, 74, 75, 23 S. Ct. 20; *Arizona v. California*, 283 U.S. 423, 463, 464, 75 L. ed 1154, 1170, 1171, 51 S. Ct. 522; *First Nat. Bank v. Louisiana Tax Commission*, 289 U.S. 60, 65, 77 L. ed 1030, 1034, 53 S. Ct. 511, 87 ALR 840; *Ashwander v. Tennessee Valley Authority*, 297 U.S. 283, 80 L. ed 688, 56 S. Ct. 466; *Anderson Nat. Bank v. Luckett*, 321 U.S. 233, 242, 88 L. ed 692, 702, 64 S. Ct. 599, 151 ALR 824."

See also 22 American Jurisprudence 2d, "Declaratory Judgments," Sections 26 and 27, and Annotation 174, A.L.R. 549.

When the statute under attack is examined in the light of the above principles and atuhorities, it is apparent that the statute by its terms does not purport to operate in such a manner as to govern or proscribe the

conduct of plaintiffs, but instead was enacted for the purpose of providing a restriction against the inherent power possessed by defendants. In other words, the statute under attack operates to govern the conduct of defendants and has no direct operation with respect to the conduct of plaintiffs or with respect to the exercise of any sharply defined constitutional right or privilege possessed by plaintiffs. That being the case, it is readily apparent from the facts recited in the complaint when those facts are read in light of the statute that these plaintiffs are not adversely affected by the statute which by its terms can only be enforced against defendants. By no stretch of the imagination can the statute under attack be construed in such a manner as to lead to the conclusion that the terms of the statute were set up to govern any protected freedom possessed by any one of these plaintiffs. This fact becomes even more apparent when the statute and plaintiffs' complaint and arguments presented and filed at the present time are read in the light of the article to be found in 109 U. Pa. L. Rev. 67, where the concept of "overbreadth" is discussed at some length. Further, the plaintiffs do not directly seem to allege and cannot allege that the language of the statute directly abridges any right of free speech by its very terms. In addition to the above authorities, defendants would request the Court to read the statute in the light of the recent case of *Younger v. Harris*, 27 L. Ed. 2d, 669, at 679 and 680, wherein the Supreme Court discusses the question of abridgement of First Amendment rights.

When all the above authorities are read in light of the statute under attack, the conclusion is readily apparent that plaintiffs' request for a three judge court to render a declaratory judgment with respect to the constitu-

tional validity of the statute in a case where the statute under attack by its very terms does not operate in an adverse manner with respect to any protected rights possessed by these plaintffs is improper. The plaintiffs not possessing the requisite interest and standing to enable them to challenge the constitutionality of the statute under attack, defendants submit that the Court lacks jurisdiction to grant plaintiffs' request for a declaratory judgment.

It is respectfully submitted on the basis of all the foregoing authorities and reasons that plaintiffs' complaint should be dismissed as requested above.

Respectfully submitted,

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(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title Omitted in Printing)
Civil Action 71-67

MEMORANDUM CONTRA MOTION THAT THREE JUDGE PANEL HEAR MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs' complaint and memorandum in support of their motion that a three judge court be convened to hear this matter contains allegations that Section 3313.66 of the Ohio Revised Code is unconstitutional on its face because of vagueness and overbreadth and further that the statute violates the First and Fourteenth Amendments to the United States Constitution. On the basis of these allegations plaintiffs seek injunctive relief preventing enforcement of the subject statute.

Plaintiffs are students who at one time or another have been suspended from a Columbus Public School for reasons not disclosed in the complaint or memorandum. Plaintiffs do not complain that the suspensions were not for good cause, but rather limit their complaint to the fact that the suspensions were made prior to the granting of a full and complete adversary hearing and without written notice.

The state statute under attack provides in substance that certain local school officials may suspend a pupil from school for not more than ten days and expel a pupil for a period of time not exceeding the then current semester. The statute further provides that in case of expulsion, the appropriate school official must notify the parent and clerk of the board of education of the expulsion and the reasons therefor within twenty-four hours.

This notice must be in writing. Thereafter the parent or guardian of the pupil may appeal the matter to the board of education and be heard against the expulsion. The board of education may thereafter, by a majority vote, reinstate the pupil. The decision of the board of education adverse to the pupil is then appealable to the Common Pleas Court, Court of Appeals, and the Ohio Supreme Court. In this regard the Court's attention is directed to Section 2506.01 of the Ohio Revised Code which reads in pertinent part as follows:

> "Every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the common pleas court of the county in which the principal office of the political subdivision is located, as provided in sections 2505.01 to 2505.45, inclusive, of the Revised Code, and as such procedure is modified by sections 2506.01 to 2506.04, inclusive, of the Revised Code.
>
> "The appeal provided in sections 2506.01 to 2506.04, inclusive, of the Revised Code is in addition to any other remedy of appeal provided by law." (See Exhibit for full text of the above statute.)

It is obvious from the factual allegations in the complaint and the provisions of the statute under attack that there is no issue in this case involving First Amendment rights.

In the absence of factual allegations that the suspensions resulted from the *reasonable* exercise of First Amendment rights the Court must presume that the suspensions were for good cause and reasonably necessary under the circumstances. Of equal significance in this regard is the fact that Section 3313.66 of the Revised Code, the statute under attack, neither prescribes nor

proscribes any course of conduct on the part of students. More precisely the statute in question does not directly involve the rights of students, but rather constitutes a substantial limitation on the authority of appropriate school officials to use suspension and expulsion as a disciplinary tool in the maintenance of good order in the schools and adherence to reasonable academic standards. For the foregoing reasons defendants respectfully submit that plaintiffs' allegation that the statute in question violates their First Amendment rights is frivilous and provides no justification for convening a three judge court to hear this matter.

The remaining issue is whether the power of appropriate school officials to suspend a pupil for a period not to exceed ten days without first providing the pupil with a full adversary hearing violates the due process clause of the Fourteenth Amendment where said suspension is for good cause. At the outset of this discussion defendants again direct this Court's attention to the fact that there is no allegation of bad faith on the part of the school officials, neither are the grounds for the suspensions or expulsions questioned. In light of this fact, it is respectfully submitted that no substantial constitutional question is presented. In support of this proposition we direct the Court's attention to the following quote from 12 ALR 2d 5, at page 57:

> "The plaintiff's pleading must affirmatively show the Federal Jurisdiction and that the case is one arising under the Constitution, laws, or treaties of the United States. Although the different decisions employ different phraseology in stating this requirement, there is agreement as to it, the courts having used such expressions as that the jurisdiction must be made to appear 'clearly,' unmistakeably,' and 'directly' and the cases affirm with unanimity that it

is not sufficient that jurisdiction may be inferred argumentatively from averments in the complaint; the averments must be positive and distinct according to the rules of good pleading; mere inference or suggestion of a Federal question is insufficient. As it is frequently stated, the Federal question must appear by a statement of facts in legal and logical form such as is required in good pleading.

"The plaintiff must state facts which will enable the court to see that the right he claims involves a Federal question with all the requirements previously stated as to the showing of such question. A mere conclusion of the pleader that the case presents a Federal question, or a mere statement or formal averment that the case is one arising under the Constitution, laws or treaties of the United States is inadequate. Time and again, in language varying in detail but not in substance, the courts have made this point clear. The Federal question must be presented not in mere assertion but in essence and effect."

Sections 2 and 3 of Article VI of the Ohio Constitution create common or public schools and vest control of the same in the Ohio Legislature. These sections in pertinent part provide as follows:

"§2 School Funds.
"The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state: * * *."

§3 Public School System; Boards of Education.
"Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: * * *."

Without question these provisions of the Ohio Constitution vest in the Legislature full power to regulate and control the public schools. In the exercise of this power

the Legislature enacted Section 3313.20 of the Revised Code which provides that boards of education shall make such rules and regulations as are necessary for their government, the government of their employees, and the pupils of the school. The State Legislature further granted certain school officials the right to suspend pupils for periods up to ten days without requiring a prior adversary hearing. Clearly the State Legislature saw the necessity for such power to be vested in those responsible for protecting school property and maintaining an academic environment that would provide a maximum opportunity for all children to obtain a good education. Implicit in the grant of this authority is a further legislative finding that suspension of a pupil for good cause up to a period of ten days would not seriously hamper a student's ability to successfully complete his school work by proper and diligent application of time and effort on his return to school. Thus in examining the Ohio Constitutional provisions regarding the public schools and laws enacted pursuant to the constitution we find no provision that grants to Ohio children an *unrestricted* right to attend school. Reasonable health and behavioral standards must be met as a condition precedent to the right to attend a public school. A punishment consisting of a ten-day suspension without an adversary hearing is certainly no more drastic in a constitutional sense than permitting reasonable corporal punishment of students by appropriate school officials (Section 3319.41, Ohio Revised Code) without a prior adversary hearing or the imposition of detention hours to be served after or in addition to regular school hours without prior adversary hearings. It is respectfully submitted, therefore, that brief suspensions of the right of a student to attend class is an equally reasonable and necessary disciplinary procedure well within the power of the Legislature to

establish and in the absence of arbitrary use by appropriate school officials is not subject to judicial veto. See for example the statement of Justice Fortas in the case of *Epperson v. Araknsas*, 393 U.S. 97, 89 S.Ct. 266, 21 L. Ed. 2d 228:

> "By and large, public education in our Nation is committed to the control of the state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values." (393 U.S. at page 104; 21 L. Ed. 2d at page 234)

Plaintiffs cite the recent case of *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731, as support for their proposition that even in limited suspension situations the Fourteenth Amendment to the U. S. Constitution requires prior adversary hearings. This case was a First Amendment case, which the instant case is not, but such wisdom is shown by the justices who deemed it necessary to write separate opinions. For example, Justice Black's statements which appear at 21 L. Ed. 2d 748:

> "Change has been said to be truly the law of life but sometimes the old and the tried and true are worth holding. The schools of this Nation have undoubtedly contributed to giving us tranquility and to making us a more lawabiding people. Uncontrolled and uncontrollable liberty is an enemy to domestic peace. We cannot close our eyes to the fact that some of the country's greatest problems are crimes committed by the youth, too many of school age. School discipline, like parental discipline, is an integral and important part of training our children to be good citizens—to be better citizens. Here a very small number of students have crisply and summarily refused to obey a school order designed to give pupils

who want to learn the opportunity to do so. One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders. This is the more unfortunate for the schools since groups of students all over the land are already running loose, conducting break-ins, sit-ins, lie-ins, and smash-ins. Many of these student groups, as is all too familiar to all who read the newspapers and watch the television news programs, have already engaged in rioting, property seizures, and destruction. They have picketed schools to force students not to cross their picket lines and have too often violently attacked earnest but frightened students who wanted an education that the pickets did not want them to get. Students engaged in such activities are apparently confident that they know far more about how to operate public school systems than do their parents, teachers, and elected school officials. It is no answer to say that the particular students here have not yet reached such high points in their demands to attend classes in order to exercise their political pressures. Turned loose with lawsuits for damages and injunctions against their teachers as they are here, it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools rather than the right of the States that collect the taxes to hire the teachers for the benefit of the pupils. This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,390 public school systems in our 50 States. I wish, therefore, wholly to disclaim any purpose on my part to hold that the

> Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent."

See also Justice Harlan's dissenting opinion wherein he states:

> "I certainly agree that state public school authorities in the discharge of their responsibilities are not wholly exempt from the requirements of the Fourteenth Amendment respecting the freedoms of expression and association. At the same time I am reluctant to believe that there is any disagreement between the majority and myself on the proposition that school officials should be accorded the widest authority in maintaining discipline and good order in their institutions. To translate the proposition into a workable constitutional rule, I would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns—for example, a desire to prohibit the expression of an unpopular point of view, while permitting expression of the dominant opinion.
>
> "* * *"

The courts and legislatures of the states have long recognized the necessity of vesting broad discretionary powers in local school officials, particularly in the area of pupil control. Even plaintiffs recognize that attendance in the public schools is not a guaranteed right to be exercised exclusive of adherence to the correlative duty to abide by all reasonable rules. In their motion for a temporary restraining order, plaintiffs request that defendants be restrained from expelling or suspending any student "for a period in excess of three (3) days without hearing and requiring the defendant school board to submit an interim procedure for handling of suspensions

pending final hearing in this case." One must conclude that in plaintiffs' eyes a three-day suspension is reasonable but a ten-day suspension is unreasonable in the absence of a prior adversary hearing.

It is respectfully submitted that this case does not involve a vague statute but rather a question of the power of a state legislature to provide a penalty for a pupil's disregard of school rules and regulations. This is a matter for the state courts to decide and presents no Federal Constitutional question within the purview of Title 28, Section 2281, United States Code, and the motion that a three judge court be convened should be denied.

Expulsion with the right of appeal to the Board of Education and the Ohio courts presents no new issue. The period between the barring of a pupil from school attendance and the hearing on appeal creates no new issue unless there is an allegation of unreasonable delay in hearing the appeal. Both procedures, temporary suspension and expulsion pending appeal, allegedly infringe upon the same qualified right in the same manner.

Respectfully submitted,

JOHN C. YOUNG,
City Attorney

WILLIAM J. MELVIN,
Chief Trial Attorney, of counsel

THOMAS A. BUSTIN,
Senior Assistant City Attorney
Trial Attorney

Attorneys for Defendants,
City Hall, 90 West Broad Street
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Phone: 461-7460.

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)
Civil Action 71-67

NOTIFICATION AND CERTIFICATE

TO THE HONORABLE HARRY PHILLIPS, CHIEF JUDGE, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Pursuant to the provisions of Title 28, United States Code, Section 2284, I hereby notify you that the complaint in the instant action seeks to restrain the action of an officer of the State of Ohio under the authority granted by state statute on the grounds of the statute's unconstitutionality.

I certify that in my opinion this case requires the empaneling of a three judge court pursuant to Title 28, United States Code, Sections 2281, 2282 and 2284.

JOSEPH P. KINNEARY,
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in Printing)
Civil Action 71-67

OPINION

This matter is before the Court on the application of the plaintiffs for the convening of a three judge court under the provisions of Title 28, United States Code, Sections 2281 et seq, and the defendants' contra memorandum.

Plaintiffs have filed a complaint herein which seeks declaratory and injunctive relief for violations of the provisions of Title 42, United States Code, Section 1983 and to secure First and Fourteenth Amendment rights.

The jurisdiction of this Court is invoked under 28 U.S.C.A. §1343(3) and 28 U.S.C.A. §2201, 2202.

Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated. Plaintiffs are students in the Columbus Public Schools. Defendants are officials charged with the direction and administration of various aspects of the school system and the Board of Education itself.

Plaintiffs challenge the constitutionality of Section 3313.66, Ohio Revised Code, Section 1010.04 of the Administrative Guide of the Columbus Public Schools and the Columbus Policy Statement on Discipline for the reason that these provide no ascertainable standards of conduct for violation of which high school students may be suspended and expelled, and thus their vagueness and overbreadth deprive students of rights protected by the First and Fourteenth Amendments.

Further, plaintiffs allege that the above indicated statute and rules deny students due process in that they authorize suspension and expulsion of high school students without prior notice, without a hearing, without a written statement of the reasons for the discipline, without the right to cross examine witnesses, without the right to pre-hearing discovery procedure, and without the right to submit evidence or to be represented by counsel.

Plaintiffs also allege that the disciplinary actions against them have been arbitrary, unequal and discriminatory.

The prerequisites for the convening of a three judge court as set out in 28 U.S.C.A. §2281 are present in this case. This case clearly presents a substantial federal question. *Calloway* v. *Briggs*, 443 F.2d 296 (6th Cir. 1971).

WHEREUPON, the Court determines that the application is meritorious and therefore the Court will notify the Chief Judge of the Circuit that in its opinion a three judge district court is required in this case.

JOSEPH P. KINNEARY
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION
Filed Apr. 7, 1972
(Title omitted in Printing)
Civil Action No. 71-67

ANSWER

First Defense

1. Defendants without abandoning the motion to dismiss they filed on April 19, 1971, file the following as their answer, as requested by the Court.

2. Defendants admit that the action is denominated an action for declaratory and injunctive relief as alleged in paragraph one of the complaint and that the jurisdiction of this Court is invoked as alleged in paragraph two of the complaint, but deny that the facts alleged warrant the assertion of such jurisdiction.

3. Defendants admit that a three judge Court has been convened to hear the instant case.

4. By way of further answer, defendants deny the allegations contained in paragraph four of the complaint.

5. Defendants admit that Herbert Williams was Director of Pupil Personnel at the time the complaint was filed but aver that he has since retired and been replaced by Norval Goss; admit that Calvin Park was principal of Central High School; admit that Philip Fulton was principal of Marion-Franklin High School; admit that Frank D. Mason was principal of McGuffey Junior High School; admit that Harold H. Eibling was Superintendent of Schools of the Columbus Public School system at the time of filing of the complaint, but aver that he has since retired and has been replaced by John Ellis and admit

that the Columbus Board of Education manages the Columbus Public School system.

6. Defendants by way of further answer admit that Dwight Lopez, age nineteen (19) was suspended from Central High School on February 26, 1971, admit that a letter dated February 26, 1971 was forwarded to the parents of Dwight Lopez, which letter advised his parents that Dwight had been suspended for being involved in a school disruption and requested that a conference be arranged with his parents. Defendants further admit that a letter was sent to Dwight's parents advising them to appear March 8, 1971, at 8:30 A.M. for a conference but that the parents did not appear and defendants communicated by phone with Mrs. Lopez and were informed by Mrs. Lopez that they were organizing. Defendants deny that Dwight Lopez is being denied an opportunity to continue his education, deny the allegation that he has not been given a reason or reasons for his suspension, and aver that several attempts were made to set up a conference with Dwight's parents relating to his suspension without success. Defendants admit that Dwight Lopez was transferred to Adult Day High School on March 24, 1971; further aver that he is presently attending the school and deny for want of knowledge all other allegations contained in paragraph fourteen of the complaint.

7. By way of further answer, defendants admit that Betty Jean Crome was temporarily suspended from McGuffey Junior High School on March 3, 1971, and aver that such suspension was to continue until March 8, 1971; that a letter dated March 3, 1971, was forwarded to the parents of Betty Jean Crome advising them of the suspension, the period that it was to run and advising them to appear on March 8, 1971, at the school for a conference relating to the suspension and that Betty Jean Crome returned to school March 9, 1971. Defendants deny any

further allegations contained in paragraphs seventeen (17) and eighteen (18) of the complaint.

8. Defendants admit that Rudolph Sutton, age nineteen (19) was temporarily suspended from Marion-Franklin High School on March 15, 1971, effective March 16, 1971, admit that a letter dated March 16, 1971, was forwarded to the parents of Rudolph Sutton advising them of the suspension, the period that it was to run and the reasons for such suspension, the reasons given being that he was involved in a school disturbance and refused to follow the directions of the principal. Defendants admit that Rudolph Sutton was transferred to South High School and deny the allegation that he was not advised of the reasons for his suspension and specifically aver that Rudolph Sutton and his father were present at the disturbance which led to his suspension and aver that he has never requested defendant Board of Education to hold a hearing relating to his suspension or transfer.

9. By way of further answer defendants admit that Tyrone Washington was temporarily suspended from Marion-Franklin High School on March 15, 1971, effective March 16, 1971, such suspension to run until March 25, 1971, admit that a letter dated March 16, 1971, was forwarded to the parents of Tyrone Washington which letter notified his parents of suspension, the term of the suspension and gave as reasons plaintiff's involvement in a school disturbance and his direct refusal to follow directions of the principal, and admit that Tyrone Washington was transferred to East High School and graduated in June, 1971, and further aver that neither Tyrone Washington or his parents have requested a hearing or permission to appear before Defendant Board of Education concerning his suspension of transfer.

10. By way of further answer, defendants admit that Susan Cooper was temporarily suspended from Marion-

Franklin High School on March 15, 1971, effective March 16, 1971, and admit that a letter dated March 16, 1971 was forwarded to the parents of Susan Cooper, advising them of the suspension, which suspension was to run until March 25, 1971, and advising them of the reasons for such suspension, namely, her being involved in a disturbance at school and her showing disrespect for the principal during the disturbance which occurred on March 15, 1971. Defendants further aver that neither Susan Cooper nor her parents have requested a hearing before defendant Board of Education relating to her suspension and that Susan Cooper is presently attending Marion-Franklin High School.

11. Further answering, defendants admit that Deborah Kay Fox was temporarily suspended from Marion-Franklin High School on March 10, 1971 with such suspension to run until March 19, 1971, admit that a letter dated March 10, 1971 was forwarded to her parents advising them of the suspension, the term that it was to run and reasons, namely, engaging in defiant conduct and showing disrespect for the principal, admit that she was resuspended on March 19, 1971, and that a letter dated March 19, 1971, was forwarded to her parents advising them of the re-suspension. Defendants further admit that Deborah K. Fox was transferred to South High School, but aver that such placement was first discussed with Lorene Howard, field counselor for the Youth Commission, since Deborah K. Fox was under her supervision and further aver that Deborah K. Fox is attending South High School.

12. By way of further answer, defendants admit that Clarence Byras was temporarily suspended from Marion-Franklin High School on March 15, 1971, effective March 16, 1971; admit that a letter dated March 15, 1971, was forwarded to the parents of Clarence Byras advising them of the suspension, that the suspension was to run until

March 18, 1971, and giving them the reasons for such suspension, namely, his being involved in a school disruption, his refusal to go to classes and his demonstrating disrespect for the principal. Defendants further aver that neither Clarence Byras or his parents have requested a hearing before defendant Board of Education concerning the suspension and Clarence Byras is presently attending Marion-Franklin High School.

13. Further answering, defendants admit that Carl Smith, age eighteen (18) was suspended from Central High School on March 1, 1971, that a letter dated March 1, 1971 was forwarded to his parents advising them of the suspension, but aver that phone calls were made to his parents on March 2, 3 and 4, 1971 to arrange a conference concerning the suspension that a conference was arranged for March 5, 1971, and defendants were advised that Carl and his mother were on their way to keep the appointment but never appeared. Defendants deny that Carl Smith is being denied an opportunity to complete his education and aver that any delay which might have occurred in his return to school was occasioned by the conduct of Carl Smith and his parents, and that Carl Smith is presently attending Evening High School and is expected to graduate in June, 1972.

14. By way of further answer, defendants admit that Bruce Harris, age 19, was temporarily suspended on March 23, 1971, admit that a letter dated March 23, 1971, was forwarded to the parents of Bruce Harris, advising them of the suspension, the term of the suspension, namely, March 30, 1971, and the reasons, namely, his being involved in the disruption of an assembly and walking out of the assembly after the principal warned that such conduct would result in suspension.

15. Defendants by way of further answer admit that the provisions of Section 3313.66, Revised Code, proscribes the procedural conduct of defendants, and deny

each and every other allegation contained in the Complaint.

Second Defense

16. Defendants aver that the complaint in its present form fails to state a claim cognizable under Title 42, Section 1983, fails to state a claim demonstrating that a specific Constitutional right possessed by any of the plaintiffs had been violated; that the provisions of Section 3313.66, Revised Code, are procedural in nature and do not proscribe or prescribe conduct on the part of plaintiffs, acting as a limitation on the inherent power possessed by defendants, and that given the conduct on the part of plaintiffs as alleged herein, the temporary action taken by defendants was not arbitrary or unreasonable and fully comported with the due process requirements of the 14th Amendment to the United States Constitution.

Third Defense

17. Defendants aver that plaintiffs had adequate administrative remedies available to them to review the temporary suspensions, and an appeal by way of Chapter 2506 of the Revised Code which in light of the facts presented in this case should have been exhausted prior to bringing an action under Title 42, Section 1983.

Wherefore, the defendants and each of them demand judgment dismissing the Complaint, with costs.

CITY OF COLUMBUS,
DEPARTMENT OF LAW
JAMES J. HUGHES, JR.,
City Attorney
By THOMAS A. BUSTIN
Trial Attorney
and

ROBERT A. BELL
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(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. 71-67
(Title omitted in printing)

STIPULATIONS OF FACT

1. Dwight Lopez in February of 1971 was nineteen (19) years of age and a student at Central High School. On February 26, 1971, Dwight Lopez was suspended from Central High School and a letter dated February 26, 1971, which letter is marked Exhibit 1(A), was forwarded to his parents. On March 1, 1971, the letter marked Exhibit 1(B) was received by his parents. On March 5, 1971, Mr. and Mrs. Lopez were advised of the meeting to be held March 8, 1971 as provided in the letter submitted as Exhibit 1(C). Prior to the suspension of Mr. Lopez, no hearing was held. Mr. and Mrs. Lopez did not attend the meeting scheduled for March 8, 1971. A demonstration was occurring in front of the administrative offices of the Columbus School District and Mr. and Mrs. Lopez could not get into the building by reason of the demonstration; however, Mr. and Mrs. Lopez did not at anytime communicate to defendants their inability to attend the meeting or reasons for not being able to attend the meeting. Dwight Lopez was transferred to the adult day school on March 25, 1971. (Defendants do not contest the fact that a transfer did occur but to object to the admissibility of such fact as having any bearing upon the determination of the constitutionality of Section 3313.66, Revised Code).

2. Betty J. Crome in March of 1971 was thirteen (13) years of age and a student at McGuffey Junior High School. On March 3, 1971, Betty J. Crome was suspended from McGuffey Junior High School and a letter dated

March 3, 1971, which letter is submitted as Exhibit 2, was forwarded to her parents. Betty J. Crome returned to McGuffey Junior High School on March 9, 1971.

3. Deborah Kay Fox in March of 1971 was sixteen (16) years of age and a student at Marion-Franklin Senior High School. On March 10, 1971, Deborah Kay Fox was suspended from Marion-Franklin Senior High School and a letter dated March 10, 1971, which letter is submitted as Exhibit 6(A), was forwarded to her parents. On March 10, 1971, a meeting was held between the school authorities and Deborah Kay Fox and her parents concerning said suspension. On March 19, 1971, Deborah Kay Fox was again suspended and a letter dated March 19, 1971, which letter is submitted as Exhibit 6(B), was forwarded to her parents. A meeting was held between Richard Kollmer, Assistant Principal, Deborah Kay Fox and her parents on March 19, 1971. On March 30, 1971, Deborah Kay Fox was transferred to South High School to complete her high school education. (Defendants do not contest the fact that a transfer occurred but do object to the admissibility of such fact as having any bearing upon the determination of the constitutionality of Section 3313.66, Revised Code.)

4. In Ohio by virtue of Section 3321.01, Revised Code, the compulsory school age is that age between six and eighteen.

5. The students named below on the date of suspension were over the compulsory school education age provided in Section 3321.01, Revised Code:

Dwight Lopez	Bruce Harris
Carl Smith	Rudolph Sutton

6. That Exhibit 10 is an authentic copy of Section 1010.04 of the Administration Guide.

7. That Herbert Williams, at the time of filing the Complaint, was Director of Pupil Personnel for the Co-

lumbus Public School System, and has since retired and has been replaced by Norral Goss.

8. That Philip Fulton, at the time of filing the Complaint, was principal of Marion-Franklin Senior High School.

9. That Frank D. Mason, at the time of filing the Complaint, was principal of McGuffey Junior High School but has since retired and has been replaced by John Mulherin.

10. That Harold Eibling, at the time of filing the Complaint, was Superintendent of the Columbus Public School System, but has since retired and has been replaced by John Ellis.

11. That Central High School, Marion-Franklin Senior High School and McGuffey Junior High School are part of the Columbus Public School system.

12. That the Columbus Board of Education is an entity as described in Section 3313.17, Revised Code, and has such management power as provided in Section 3313.47, Revised Code.

13. That the School administrators utilized the procedure provided in Section 3313.66, Revised Code.

14. That the students named in the within Complaint following suspension did not request a hearing before the Columbus School Board. The Ohio Revised Code Section 3313.66, the Administrative Guide and the Policy Statement on discipline do not provide for a hearing in the event of a suspension.

15. That the accumulative record card for Fox, Lopez, and Crome contains the following entries as a result of the suspensions set forth above:

Deborah Kay Fox — 3/10/72 Suspended
for Student Disruption
Dwight Lopez — None
Betty Crome — None

CITY OF COLUMBUS,
DEPARTMENT OF LAW

JAMES J. HUGHES, JR.,
City Attorney

By THOMAS A. BUSTIN
Trial Attorney

By ROBERT A. BELL
Associate Counsel

Attorneys for Defendants
90 W. Broad St.,
Columbus, Ohio
461-7460

Attorneys for Plaintffs

EXHIBIT 1A

Superintendent of Schools — Harold H. Eibling

CENTRAL HIGH SCHOOL
75 Washington Boulevard, Columbus, Ohio 43215

February 26, 1971

Mr. and Mrs. Manuel Lopez
831 Franklin Ave.
Columbus, Ohio

Dear Mr. and Mrs. Lopez:

We have had a continued problem in school for several days and today a group of students disrupted our complete school program.

Dwight was in the group and we need to have a personal conference with you and Dwight to determine what the problems may be.

Please keep him at home until a conference can be arranged. This will take some time. We will be communicating with you.

Respectfully,

CALVIN PARK
Principal

EXHIBIT 1B

Superintendent of Schools — Harold H. Eibling

CENTRAL HIGH SCHOOL
75 Washington Boulevard, Columbus, Ohio 43215
Telephone 224-3184

March 1, 1971

Mr. and Mrs. Emanual Lopez
831 Franklin Avenue
Columbus, Ohio

Dear Mr. and Mrs. Lopez:

It will be necessary for you to appear at the Board of Education before Dwight returns to school. I have given your telephone number to Mr. Williams of the Pupil Personnel office of the Board of Education. He will be in touch with you to set up an appointment.

Dwight is to remain home during the hours school is in session.

Yours truly,

JAMES C. FURGASON

EXHIBIT 1C

61 S. Sixth St.
Columbus, Ohio 43215
March 5, 1971

Mr. & Mrs. Emanual Lopez
1112 Miller Avenue
Columbus, Ohio

Dear Mr. & Mrs. Lopez:

An appointment has been arranged for you and your son, Dwight, to appear at the Pupil Personnel Office on Monday, March 8th, at 8:30 a.m.

Sincerely,

H. M. WILLIAMS, *Director*
Pupil Personnel

EXHIBIT 2

Superintendent of Schools — Harold H. Eibling

McGUFFEY ELEMENTARY SCHOOL
2832 McGuffey Road, Columbus, Ohio 43211

March 3, 1971

Mrs. Martha Jane Adams
1666 E. 25th Ave.
Columbus, Ohio 43219

Dear Mrs. Adams:

This is official notification that your son/daughter, Betty Jane Crome has been temporarily suspended from McGuffey Jr. High. This suspension will continue until March 8, 1971 at 10:45 at which time you are to accompany him/her to school for a conference. During this time he/she is to remain at home during school.

Yours respectfully,

FRANK D. MASON
Principal

EXHIBIT 6A

Superintendent of Schools — Harold H. Eibling

MARION-FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 10, 1971

Mr. & Mrs. William Young
3351 Southfield Drive, East
Columbus, Ohio

Dear Parents:

I have suspended Deborah from Marion-Franklin High School until Friday, March 19.

Deborah was extremely defiant, and disrespectful with the assistant Principal today.

During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

RICHARD KOLLMER
Assistant Principal

EXHIBIT 6B

Superintendent of Schools — Harold H. Eibling

MARION-FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 19, 1971

Mr. & Mrs. William H. Young, Jr.
3351 Southfield Drive, East
Columbus, Ohio

Dear Parents:

I have suspended Deborah Fox from Marion-Franklin High School until Monday, March 29, or until contacted by Mr. Robert Carter or his representative regarding your daughter's school placement.

During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

RICHARD KOLLMER
Assistant Principal

EXHIBIT 10

ADMINISTRATIVE GUIDE

Section 1010 — Discipline of Pupils

1010.01 — Disciplinary measures shall be reasonable and appropriate to the nature of the misbehavior of the offending pupil and in accordance with the holdings of Ohio courts of law.

1010.02 — Although no statute makes a specific mention of corporal punishment, Ohio courts have held that a teacher or principal may administer such punishment. In the Columbus Public Schools, corporal punishment may be used as a last resort and after all other means of punishment have proved ineffectual. Corporal punishment must be administered in the presence of at least one adult witness.

1010.03 — Under no circumstances shall punishment be cruel or excessive or administered from malice or passion.

1010.04 — Pupils may be suspended or expelled from school in accordance with the provisions of Section 3313.66 of the Revised Code.

EXHIBIT 11

COLUMBUS PUBLIC SCHOOLS

Policy Statement on Discipline

The belief that the Columbus Public School System has a responsibility to teach proper behavior patterns is based on the following premises:

1. The school must provide educational opportunities so every child may achieve to his fullest potential and become a contributing citizen in a democracy.

2. The child is a social being and as such must learn to recognize that certain types of behavior are necessary in a democratic society. Disciplined behavior is a basic need of such a society.

3. Discipline is a developmental need of each pupil. There is a feeling of security if limits are known to pupils and they live within appropriate limits.

4. Discipline has two major purposes: 1) securing a classroom atmosphere conducive to maximum educational achievement; 2) helping each pupil develop self control.

5. The development of an educational environment conducive to learning and individual self control is delegated to the school by society as its agency for perpetuating and improving the democratic way of life. Thus good discipline is a legitimate task and assigned responsibility of the school.

From these premises the following areas of responsibility develop:

Responsibility of the Pupils

Pupils shall accept the authority which has been delegated to the school by society.

Pupils shall respect those rules and regulations necesary for the orderly operation of the school and growth in citizenship.

Pupils shall respect school property, the rights of others, and the opinions of others. They must learn to accept the consequences of their decisions and behavior.

Pupils shall dress and groom themselves in a manner which will not infringe upon an atmosphere conducive to learning, and for the same reason shall maintain habits of personal cleanliness.

Pupils shall strive to develop habits of self-discipline that they may make positive contributions to the society in which they live.

Pupils shall behave in such a way that they will bring credit to themselves and their school.

Responsibility of Teachers

Teachers shall regard each pupil as an individual worthy of respect and dignity and shall help each pupil learn to regard himself in this manner.

Teachers shall present a program of instruction that will enable each pupil to achieve his full academic and social potential in each area of study.

Teachers shall help each pupil to understand the nature of acceptable and unacceptable behavior in the development of the desired goal: self-discipline.

Teachers shall set an example of acceptable behavior with respect to dress, grooming, coiffure, speech, and manners.

Teachers shall work with administrators and other staff personnel to promote a climate conducive to learning and achievement in the school.

Teachers shall accept responsibility for knowing and enforcing the rules and regulations of the school.

Responsibility of the Principal

The principal shall work with his staff to create an environment conducive to learning.

The principal shall involve the staff of specialized personnel, including school psychologists, school counselors, attendance officers, and health personnel, in dealing with individual and group behavioral problems.

The principal, with the advice of the staff, shall develop school rules and regulations that will encourage pupils to develop acceptable patterns of social behavior.

The principal shall consider initiating a student advisory group to aid in the implementation of school rules and regulations.

The principal, by virtue of his position of authority, shall keynote the approach to good discipline in his school. In this vital area of school affairs, he and his staff shall work cooperatively on problems of behavior. The administrator may deem it best to use forms of punishment not available to the teacher, such as corporal punishment or suspension. The final decision on the appropriate form of punishment to be employed rests with the administrator, since such responsibility has been delegated to him by the Board of Education.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)
Civil Action No. 71-67

STIPULATION

Counsel for plaintiff and counsel for defendants stipulate the above captioned case may be determined upon its merits, the motion, pleadings, stipulations, and exhibits, and briefs which have already been filed in this cause.

CITY OF COLUMBUS,
DEPARTMENT OF LAW

JAMES J. HUGHES, JR.,
City Attorney

By _____
THOMAS A. BUSTIN,
Trial Attorney

Attorneys for Defendants
90 West Broad Street
Columbus, Ohio 43215
461-7460

ROBERT A. BELL,
Of Counsel

_____

_____

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT OF
THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)
Civil Action No. 71-67

MOTION

All defendants herein respectfully move the Court to enter an order striking all stipulations which were filed in the above captioned cause for the purpose of submitting this case to this Court for a decision based on a stipulated set of facts and defendants specifically request that plaintiffs be placed upon the proper burden of proving the allegations contained in their complaint, it having been indicated by the Court that this case cannot be decided on stipulations and that a full trial will be necessary in this cause.

THOMAS A. BUSTIN,
Trial Attorney

Attorney for defendants
90 West Broad Street
Columbus, Ohio 43215
Phone: 614/461-7460

ROBERT A. BELL,
Of Counsel

MEMORANDUM

At a meeting called by the Court in the above captioned case on May 25, 1973, defendants were advised that the three judge panel convened in this case was unable to reach a decision of the case based upon the stipulations that had been submitted, and it was defendants' further understanding that the further or addi-

tional stipulations would not lead to a resolution of the problem, leaving the only recourse being that of a full evidentiary hearing on the complaint.

It being indicated that a full dress evidentiary hearing would be necessary in this cause, defendants herein request that all stipulations previously filed herein for the purpose of deciding this case on the basis of stipulations, be removed and that such full hearing be a hearing in which plaintiffs are required to prove the allegations contained in their complaint. In other words, defendants specifically request that plaintiffs be placed upon the proper burden of proof, to prove the allegations in their complaint.

Respectfully submitted,

THOMAS A. BUSTIN,
Trial Attorney

Attorney for defendants
90 West Broad Street
Columbus, Ohio 43215
Phone: 614/461-7460

ROBERT A. BELL,
Of Counsel

(CERTIFICATE OF SERVICE omitted in printing)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT
EASTERN DIVISION

Case No. 71-67

(Title omitted in printing)

Deposition of Doctor John Ellis, the Defendant herein, called by the Plaintiff as if on cross examination under the statute, taken before me, the undersigned, Deborah M. Guedry, an official reporter within and for the State of Ohio, at 270 East State Street, Columbus, Ohio, on Wednesday, June 27, 1973, commencing at 1:00 p.m., and concluding on the same day; pursuant to the stipulations of counsel hereinafter set forth; said deposition to be read in evidence on behalf of the Plaintiff upon the trial of the above entitled cause.

(page 2)

APPEARANCES:

PETER ROOS, Harvard, Center of Law, 71 Kirkland Avenue, Cambridge, Massachusetts, appearing on behalf of the Plaintiff.

DENIS MURPHEY, of the firm of Patchen, Murphey, and Allison, 8 East Broad Street, Columbus, Ohio, appearing on behalf of the Plaintiff.

DALE CRAWFORD, Official City Attorney, City Hall, Columbus, Ohio, appearing on behalf of the Defendant.

THOMAS BUSTIN, Official City Attorney, City Hall, Columbus, Ohio, appearing on behalf of the Defendant.

STIPULATIONS

It is agreed and stipulated by and between counsel for the respective parties herein that this deposition may be taken in shorthand by Deborah M. Guedry, who may

later, out of the presence of the witness, transcribe, or cause said shorthand notes to be transcribed; that all formalities as to the notice of the time and place of the taking of the said deposition and the qualifications of the officer before whom taken shall be expressly waived.

(page 3)

DOCTOR JOHN ELLIS.

being duly sworn to testify the truth, the whole truth, and nothing but the truth, as hereinafter certified, deposed and testified as follows:

CROSS EXAMINATION

By Mr. Roos:

Q. Doctor Ellis, could you state your full name and position in the Columbus School System? A. My name is John Ellis. I am Superintendant of Columbus Public Schools.

Q. And for how long have you held that position? A. I began my work on August 1, 1971.

Q. Prior to that time, could you briefly give us a rundown of your background, educationally and in your work experience? A. Prior to coming to Columbus, I was superintendant of the Lakewood City School District for five years. Prior to that I was superintendant of the schools in Massillon, Ohio. Prior to that I was a graduate student and had also been a teacher and school principal.

Q. For how many years were you a teacher? A. For three years.

Q. And of what grades? **(page 4)** A. I have taught at the fourth grade level, the sixth grade level, the seventh grade level, and the twelfth grade level.

Q. Okay. For how long were you a principal? A. I was a principal for three years.

Q. Okay. Is that of a high school and elementary school? A. I was principal in elementary school.

Q. Are you familiar with the suspension and expulsion procedures that were in effect in March of 1971, fully recognizing that you were not on the staff at that time? A. I am not fully acquainted with the procedures because I was not on the staff at that time.

Q. Do you have any knowledge concerning the procedures that are presently in effect? A. Yes. We currently have procedures that are in effect, and we are currently considering possible revisions.

Q. Do you have any knowledge concerning any changes from March of 1971 to the present procedures, of your own particular knowledge? A. Changes may have occurred, but I am not acquainted with what specifically they may be, if, in **(page 5)** fact, changes did occur.

Q. Okay. Could you tell us what written procedures there are in the Columbus schools for handling expulsions and suspensions? At the present time, excuse me. A. We have a document that has been circulated by the Department of Pupil Personnel Services with the authorization of the deputy which specify our procedures to be followed in the case of both suspension and expulsion.

Q. Is that something other than Section 1010 of the Administrative Guide. I show you this for your convenience. A. The document to which I referred is the supplementary procedure that would go with the Section 1010.

Q. I see. Do you have copies of that procedure in your possession? A. I believe I do. This is the latest copy is it not?

Mr. Roos: Off the record.

(Discussion off the record.)

Mr. Roos: On the record.

By Mr. Roos:

Q. Go ahead. **(page 6)** A. I have two documents here that would cover the question raised.

Q. Okay. Could you — do you have spare copies that we could have? A. Yes. You may have these if you wish.

Mr. Crawford: Can we mark these as Exhibits so that they will be submitted to the Court.

Mr. Roos: Plaintiff's Exhibit 1 is the document with a B at the top of the page. This is a memorandum addressed to all principals and administrative staff from the Department of Pupil Personnel. It is dated August 16, 1971.

Exhibit 2 has a C at the top. It is to the secondary principals from Norval Goss. It is dated February 21, 1973.

By Mr. Roos:

Q. Could you briefly explain what Exhibit 1 is and what Exhibit 2 is and how they are intermeshed, if they do at all? A. Exhibit 1 is a memorandum to all school principals and administrative staff summarizing administrative procedures for dealing with a variety of administrative concerns, specifically the attachments presented to you today. Those concerns include suspensions and expulsions and the procedure **(page 7)** by which principals will conduct such suspensions and expulsions or recommend the same. The document of February 21, concerns suspensions, expulsions, and adjustment transfers. It restates the previous policy and constitutes a reminder to principals of the procedures in effect.

Q. I refer to Exhibit 1, which is the August 16 document, and I note that at the bottom of my copy is stated that it is, "Part of a fourteen-page bulletin."

Do you know to what that refers?

A. Yes. The other part of the bulletin considered questions like baby sitters and nursery schools, transfers dealing with residents, illegal custody and guardianship, medical transfers, voluntary registration, involuntary

transfers, procedure by which the principals make these transfers. In essence, the document is dealing with many of the administrative problems related to the assignment and transfer of pupils. We did not give you the total document because I understood the point and the issue in our discussion to be that of the suspension question.

Q. Well, I would be interested in getting the entire thing if possible, if we could run off a copy. **(page 8)** A. We would be happy to provide the entire document.

Q. Now, we were to refer to the State statute 3313.66, the Administrative Regulation 1010 — I believe there is a following section — and to Exhibit 1 and 2 which you have just handed me. You would have a picture of every written procedure concerning suspensions and expulsions presently in effect; would that be a correct statement? A. don't know if it would include every written procedure or document related thereto. It certainly covers the section policies. I am not aware of other written documents, but I cannot attest that there are none.

Q. I see. Are there in addition any sort of oral procedures for handling — strike that.

In addition to these written documents outlining the suspension and expulsion procedures, have there been any conversations or oral meetings with school officials at which time additions or deletions to these written regulations may have been conveyed to principals?

A. I am not aware of any such meetings other than the standard administrative meetings that we have to review procedures. Such meetings, to my knowledge **(page 9)** are simply concerned with explaining the procedures and responding to questions, but not with the deletion or addition of items to that list.

Q. I see. Are there any internal procedures within the administrative office of the Columbus schools to insure that these regulations are carried out? A. That is a func-

tion of the deputy superintendent of schools, working with the Department of Pupil Personnel Services.

Q. I see. And you would not have any personal knowledge of these sorts of procedures to which I referred? A. The major procedure of which I am aware is the letter to the Department of Pupil Personnel Services when a suspension occurs, and the possible inquiring with the principal in the event that a conference would seem to be appropriate.

Q. Okay. On your own knowledge, could you outline how a typical suspension is meted out at the present time?

Mr. Crawford: I will object to that. I think the document is the best evidence for the procedure. I don't think there is any reason to reiterate. **(page 10)**

The Witness: The document constitutes the total procedure of the school system. I cannot speak to how each individual principal might administer it. To the best of my knowledge, the principals do follow those procedures.

By Mr. Roos:

Q. Let's back up for a minute or two.

Off the record.

(Discussion off the record.)

Mr. Ross: On the record.

By Mr. Roos:

Q. I have just reviewed Exhibit 1 and 2 which you previously handed to me. With respect to those exhibits, I have a couple of questions as to your interpretation of those.

First of all, the regulations or what not are silent, as I read them, as to reasons for suspension. Are there any additional regulations that spell out grounds for suspension?

A. I am not aware that the grounds for suspension are spelled out in any single system or document. Our schools do have school rules, and students are apprised of school

rules. The procedures and rules and regulations of the Board of Education — State, Federal, City law — could all **(page 11)** be areas that could be grounds for suspensions.

Q. I see.

Now, you state that each school has its own regulations; is that a correct statement of what you said?

A. Virtually each school does. There may be one or two. We have some very small schools that would not have a particularly extensive list of rules and regulations.

Q. Okay. Is there any essential place that these rules and regulations promulgated by the schools can be obtained? A. The various school rules that exist are not catalogued or organized in any single central place at the present time.

Q. Do you have any knowledge concerning the methods that these rules are conveyed to the pupils? Is there any standard procedure for conveying the rules that we are now talking about to the pupils? A. The typical methods would be school assemblies, announcements on the P.A. system, school handbooks, school bulletins, memos sent to parents, council meetings. These would vary from one school to another, but in many schools all procedures would be used. **(page 12)**

Q. But the central administration does not have a procedure for insuring that these are distributed to each of the students? A. That is correct.

Q. With respect to the regulations dealing with suspensions, it is mentioned that a notice is to be sent out within twenty-four hours; is that not correct? A. A letter to the parent.

Q. A letter to the parent or guardian? A. A letter to the parent or guardian that should be preceded by a phone call possibly, but the first written document would be the letter.

Q. Is there — strike that.

Would it be fair to say that the letters, in terms of their detail and what not, would vary as they are sent out? I mean, is there any standard format concerning the amount of detail that is contained in such a letter?

A. The amount of detail would have to be determined by the principal, because the incidents would vary. The length of explanation would vary.

Q. Now, the letter that I am referring to — this is Exhibit 2, Section A4. There is mention of a carbon copy of the letter to Pupil Personnel. Do **(page 13)** you know if that — for how long that letter remains in the child's file? A. No.

Q. You don't know how long?

Mr. Bustin: I want to object.

Mr. Roos: Let me back up a second.

By Mr.Roos:

Q. With respect to what happens to that letter when it arrives at Pupil Personnel, if you know? A. No, I don't know.

Q. Is there a file maintained in the schools on each individual child? A. Yes.

Q. What sort of things go into that file? A. We had basic biographical information showing name, address, birth dates, parents, their residence. We also have a health record that would include the immunizations a student would receive and any medical admonitions that we should follow in the event that the student might be diabetic or have epilepsy. We would also include in the file basic scholastic information, such as the grades received and also such factors as attendance and honors earned. Later in the secondary schools, we have such things as a request to send transcripts to college and the **(page 14)** various procedures relating to insuring that students receive an application and are handled expeditiously when they request such a transcript to be made.

In summary, it is a fairly comprehensive description of basic information.

Oh, I omitted in my earlier discussion the dates enrolled in the school if the student is new to the district, scholastic record that he had previous — at the previous school and any other pertinent information that would be forwarded in that. It could include medical information.

Q. Would correspondence to the family or guardians of the pupil be in the file? A. This would vary from school to school. In most cases correspondence, if it were of a significant nature, would be included. A simple note to the parent would not necessarily be included.

Q. Would a letter concerning a suspension or expulsion be in a file? A. In most cases I would think that it would be.

Q. I am referring now to, I think, high school students. What uses are made of the files? A. The files are for the professional use of the teaching and administrative personnel of the **(page 15)** school.

Q. Now, you mentioned that they are used in responding to college requests for transcripts and things of this sort. Is that a correct statement of what you said? A. Yes. We would indicate when transcripts were sent.

Q. Do you respond to requests from employers, the military, and others concerning — let me rephrase the question. Do you receive requests from employers and others concerning a given student? A. We sometimes receive requests for verification of graduation or things of that nature.

Q. Do you receive requests for recommendations from employers? A. You mean written formal requests?

Q. Written or oral — any sort of requests from employers. A. That could happen occasionally. More frequently we receive notification of employment possibili-

ties which are passed out to the guidance counselors and others. So students who are interested may apply.

Q. Concerning a student who may have graduated or who may have left the system and are **(page 16)** out in the job market or elsewhere, do you ever receive requests for information concerning them — recommendations, transcripts, or what not? A. I do not personally receive any such requests or have not. Whether an individual principal may, would be a question that you should refer to a principal.

Q. I see. In your experience as a principal and as a school administrator, do you know if those sorts of requests are made in general? A. Requests do come from time to time in school systems. In our response to such requests, we confine any information released to very basic items such as, they graduated, something of that nature.

Q. Now, concerning college recommendations. My recollection of applying for college is that colleges do ask for recommendations. Is that not so, more than just mere requests for transcripts? A. The college process places a heavy responsibility on the student to identify persons within the school system whom he would like to have write references for him to colleges. The process, therefore, is that the student takes whatever application form the college wishes and hands or **(page 17)** sends it to someone he chooses to write a recommendation.

Q. I show you a document that ended up in our files somehow. I would like you to identify and tell us what it is. It is entitled Columbus Public Schools, and the subheading is policy statement on discipline. You can run off a copy and make it an exhibit if desired. A. To the best of my knowledge this appears to be a document developed by a committee for possible action. Again, to

the best of my knowledge, I don't believe this has ever been instituted as policy in the district.

Q. Okay. We have made a further review of Exhibits 1 and 2 and noted that Exhibit 2, the February 21 document, refers to in the second sentence — I will read the second sentence.

"In another bulletin dated April 13, 1972, we mentioned adjustment (involuntary or disciplinary) transfers."

Would it be possible to get a copy of that?

A. Yes.

Q. And that bulletin is presently in effect also; is that so? A. Yes. **(page 18)**

Q. You previously mentioned that there were some changes under consideration concerning suspensions and expulsion procedures. Could you tell us what the procedure is for, presently utilized, to effect a change? A. Currently we are discussing whether every procedure is clear and whether the written regulations are sufficient. We have had discussions with our central office personnel and with our attorneys and would also inquire with the principals in the field, for they must administer whatever policies we have.

Q. What areas have been discussed as possibly being insufficient? A. We believe that our basic policy at the present is quite good. We think they are reasonable and do constitute appropriate procedures for dealing with questions of suspension.

As you indicated earlier in your questioning, however, we have not itemized the grounds for which suspension may be determined. We are proceeding on the basis that school rules, city law, state law, federal law, and Board of Education rules and regulations would, by the virtue of their existence, constitute such rules; but we have not

(page 19) explicitly stated in our instructions to principals. It is explicit in all our previous discussions, but not stated. That is one area that we think a policy should cover. Otherwise, we think the procedures as they currently stand are quite good.

Q. Now, who is involved in determining to revise the regulations? What procedure is utilized in revising these regulations? A. Well, we will have discussions with Mr. Dumaree, which is deputy superintendant, and Norval Goss, which is the person in charge of the Pupil Personnel Services, and a group of persons to ask their advice and assistance. When we reach concensus or if concensus is not reached, then the superintendant would decide what the course of action would be. In most cases, we are professionals and reach agreement readily.

Q. Do you keep any records of the number of suspensions and expulsions that are issued in a given time? A. The records on that would be kept in the Department of Pupil Personnel Services.

Q. You do have records computing the number of suspensions, for example, at Marion-Franklin and a number at Central and what not? (page 20) A. We have some records. I wouldn't state that in all cases we have perfect records.

Q. I see. What are the — we have been through suspensions and expulsions as being the common forms of discipline. What other methods of discipline are utilized by the Columbus schools.

I don't want to refer to things like staying after school to clean the blackboards, but I am thinking in terms of larger things such as transfers and things along that line.

A. We attempt to understand each student and provide environment in which he will be motivated to do his best. Discussions with him, with teachers and principals, and with the parent or guardian is a common way

of identifying what should be the best course of action. We might transfer a student to another school if we feel that it is in his best interest and in the best interest of the school system. We can have a discussion session in which we point out his deficiencies and that can be very effective. We ask parents to come to school and confront the student and teacher and the alleged incident in form of a process to get at why this is happening and hoping that the parent and home will assume their share of responsibility. (page 21)

As you mentioned, the staying after school and things of that nature are still very much a part of the scene. We also have the option of corporal punishment, which is the administration of a paddling to a student, if we think that is appropriate and would produce a solution to the problem. The basic approach is that the principal and teachers attempt to understand the student and why the student is acting as he is and develop a professional appropriate means of assisting the student to get the most from his education.

Q. Referring especially to transfers, are you familiar with any statutory authority that authorizes transfers? A. I can't cite the section, but we do have authority to assign a pupil to a school.

Q. Do you construe the power to assign a pupil to a school as giving you the authority to transfer a pupil for disciplinary reasons? A. We do have the authority to transfer for disciplinary reasons.

Q. And you refer to your lawyers to tell you what the authority is, I assume? A. State law, our administrative guide, Board of Education regulations itself, and the advice of (page 22) the attorneys are all part of what we rely upon.

Mr. Roos: I think we are finished. Thank you very much.

DIRECT EXAMINATION

By Mr. Crawford:

Q. Doctor, before you were asked to review what has been marked as Exhibit 1 and 2 — Plaintiff's Exhibit 1 and 2 — you referred to those exhibits as being directives from a popular school administrative body to principals in the school system. If a principal does not follow those directives, would that not following of the directive be an authorized or unauthorized act? A. It would be unauthorized. The principals are obligated to follow all the rules and regulations of the Board of Education and the administrative regulations of the central office.

Q. Also, you were asked to make reference to the files that were being obtained by this school system for each pupil. Reference was made to the information required by employers, military, colleges, from those files. Could you state what part of the files would be available to the persons outside of the school system? **(page 23)** A. We attempt to preserve the integrity of the individual whenever we discuss the record. What he has accomplished in school, basic information such as the grades received, attendance, entrance and leaving dates would be information that we would convey. It would be highly unusual if we would discuss whether a student was suspended or an item falling into that category. Increasingly we are constantly aware that they do have their rights. We must be. We want to give careful consideration so that we do not violate their rights.

Q. Is there a master card — let's say — that would follow a student throughout the school system — a central document? Would there be more than one document that would be considered as a master record? A. Master records would be more appropriate. We have an informational file in which various documents can be placed in them. For the most part, the basic information is contained on a single four sided document that is inserted into the folder.

Q. So if a letter was inserted in the folder, would that letter be part of that master card you were referring to? A. The letter would not be on the card, but **(page 24)** could be in the folder.

Q. You said the purpose of the school system was to preserve the integrity of the files. What did you mean by preserve the integrity of the files? A. We do not permit anyone in the professional capacity in the school system to have access to the files. That is the student's personal record and some of the information could be considered privileged and appropriate only to work with the student to improve his education.

Mr. Crawford: Mark that as Defendant's Exhibit 1 and Defendant's Exhibit 2, Defendant's Exhibit 3, 4, 5, 6, and 7.

> The documents referred to were marked for identification as Defendant's Exhibits Nos. 1 through 7 by the reporter.

By Mr. Crawford:

Q. Doctor Ellis, I will hand you what has been marked as Defendant's Exhibits 1 through 7 and ask you to please go through each one, and if you can, identify which exhibit you are referring to and please identify the exhibit. **(page 25)** A. Exhibit 1 is a summary of elementary school.

Q. When you say summary of elementary school, summary of whom? A. Work including the general academic —

Q. Are you referring to the pupil's summary? A. Yes. It gives the legal name and birthplace of the student, birthday, and includes a general academic rating and includes space for immunizations and medical information. It gives his home room and date when he was promoted

from elementary school to junior high school and high school. This such information as changes in residency, attendance data, personal test data, and also some personal traits point out — Mr. Goss, that section has been revised in the new item. I don't know if this is currently the one that should be introduced.

Q. Do you know when that Defendant's Exhibit 1 was used for the Columbus school system? A. The personal trait area is one that we have dropped from the most current record. Mr. Goss would have to state the exact time, but it seems to me it was the beginning of this school year, spring.

Exhibit 2 is Columbus Public Schools elementary and junior high school permanent record which gives residential data, parental data, again **(page 26)** the medical information; scholarship in terms of A, B, C, D, and F; terms of scholarship, test data; and space for remarks. Is that what you wanted?

Q. Yes. A. Exhibit 3 is Columbus Public Schools for senior high school, listing name, address, parents, and contains sections for the various subject areas listing the type of class, the grade received, and the unit of credit. On the back it includes a place to record whether transcripts were sent to various institutions such as colleges.

Exhibit No. 4 is Columbus testing profile. It is a document used to indicate how the student scores on standardized achievement tests.

Exhibit 5 is an attendance card which is made out for each pupil listing the pupil's name, address, teacher, parent, birthdate, room number, grade. It would be a record of the student's attendance. On the back of that particular card, we make reference to any home visits that are made.

Exhibit 6 is a Columbus Public Schools cumulative record folder. This is the folder in which the other documents to which I referred are placed, plus any other information considered to be appropriate for inclusion in the permanent record **(page 27)** folder. This is the latest edition of the cumulative record folder.

Q. Please identify that, Doctor. A. This is Exhibit 7. The date is 6-26-73. This is a document that revises previous cumulative records. This will be used for all new students and it includes the same basic information about birth data, parental data, residential data, individual test scores, elementary, attendance, scholarship, and then has many sections that indicate we have entered the computer world — a lot of spaces for the ten grade level, the eleven grade level.

I said level. I meant label. It starts with grade seven and provides a space in which the gummed label, which comes from the computer, can be attached to the folder, giving the student's grades. There is also a supplemental personal record that is part of Exhibit 7 which lists the extra curricular activity in which the student has engaged and the honor and recognitions and a space for a teacher to make comments, such comments to be dated and signed by the teacher.

Q. Doctor, you are making reference to Defendant's Exhibit 7. Is that document to replace **(page 28)** any other documents that were previously identified by you? A. Yes, I will have to go back and check which ones. They replace Exhibits No. 1 and 2.

Q. When is the effective date of the replacement take place? A. All new students will receive these, and we are in the process of converting at the present time to the others.

Q. Now, Doctor, previously you made reference to a file that will follow the student throughout his academic education in the Columbus School System. What document were you referring to as a single document that

followed them throughout? A. I could not state that only a single document would follow them throughout. Each student has a cumulative record folder in which the various documents to which I referred are placed. The basic information is Exhibit 7 or Exhibit 1 and 2 which are in the process of being phased out; but I do not think it would be appropriate to say only this would be in the cumulative product.

Q. Doctor, at the time this lawsuit was filed that made reference to a suspension that took place in 1971, what documents were in existence at that **(page 29)** time? A. Exhibits 1 and 2 and 3 would be in effect. Exhibit 6 would be. 4 and 5 would be in effect, and 6 would be in effect at the time that you stated.

Q. When an employer or college or military or any other authorized person requests information and the Columbus School System makes a request for data on a pupil, from what documents is this data to be obtained? A. From Exhibit 7 or all the exhibits I previously discussed.

Q. Are there any other documents from which those persons that I enumerated would obtain information from what would be in a pupil's folder? A. Not normally.

Q. Is there a policy in the Columbus School System about the documents that are to be used to give information to persons requesting it? A. I don't think we have that in writing.

Q. What is the policy? A. The policy is to release only information that would be considered standard information, such as the attendance, grades, test scores.

Q. Doctor, in my last question, you mentioned — **(page 30)** A. If you would hold it a minute, I would like to refer to the specific section in the administrative guide that gives instructions on that question. We have two sections that deal with the question of permanent records. Section 1016, entitled permanent records, cites the

fact that records shall be kept for each pupil in the Columbus Public Schools for the time of his first enrollment from his graduation from senior high school or withdrawal and indicating one cumulative personal record, the elementary permanent record, the junior high school academic, the senior high school academic record, and the Columbus testing profile. It also indicates that pursuant to and in accordance with sections 91 and 941 of the Revised Code, pupil's files may be microfilmed. Section 1016.03 of the Administrative Guide states that information contained in all official school records, including the permanent record data listed, Section 1016.01 of this Guide is confidential and shall be available only to employees of the Board, parents and guardians, law enforcement officials, and such other individuals as principals of each school may designate.

Q. Doctor, you listed five different areas of permanent records. Have you identified those **(page 31)** five current records previously? A. The records I have spoken to have previously been identified in the records presented.

Q. The question you made reference to about procedures that were being considered by yourself with respect to suspension procedures utilized in the Columbus School System — the new procedures to be adopted — what form would those new procedures take to make them? What would be considered the official procedures of the school system? A. The form that would be in effect would be bulletins from either the superintendant of schools, the deputy secretary of schools, or the division of Pupil Personnel Services, specifically enumerating the new procedures that would be in effect.

Q. Would that be similar to any exhibit that has been previously identified today? A. It would be similar to the Exhibits 1 and 2 that were first discussed in this deposition.

Mr. Crawford: I have nothing further. **(page 32)**

RECROSS EXAMINATION

By Mr. Roos:

Q. Doctor Ellis, I don't have all of those exhibits in front of me, but if my recollection is correct, there was ample room for comments at various places; is that a correct statement? A. That is a correct statement. Although, if you would attend a committee discussion, you would sometimes think that we could never provide enough room for comments.

Q. You could never provide enough room for comments? In those places, it certainly is not inconceivable that mention of a suspension or expulsion or transfer could appear; would that not be so? A. That could be so.

Q. Okay. One of the cards apparently is released commonly, or the information is released commonly is information concerning attendance; is that correct? A. That could be released, yes.

Q. If a child were suspended or expelled, would he not — how would that appear on his attendance card? A. As absent. **(page 33)**

Q. Now, where is this cumulative record, assuming that the child is still in the school, the Columbus School System — let's say hypothetically a senior at Marion-Franklin. Where would that card — that cumulative card folder — be kept? A. At the school.

Q. And would it be kept with any other documents, or is it physically separate from all other documents? A. It would be kept separate from other documents for convenience of insuring that the cumulative records were all in the same place.

Q. I see. If a child were transferred from one school to another, that would be reflected in one of the exhibits? That is in the cumulative record folder; is it not? A. Yes.

Q. Is there any reflection whether the transfer was voluntary or involuntary? A. I am not certain if we formally indicate whether it is voluntary or involuntary.

Q. But it might appear? A. I don't know.

Mr. Roos: Off the record.

(Discussion off the record.) **(page 34)**

Mr. Roos: On the record.

By Mr. Roos:

Q. Again I would like to show you something entitled cumulative personal record, and ask you to identify that. A. It is a record that has been in effect in Columbus Public Schools.

Mr. Crawford: It has not been marked; do you want to mark this as an exhibit?

Mr. Roos: This is just a copy of Exhibit 2. Let me refer to Exhibit 2.

By Mr. Roos:

Q. May I draw your attention to Defendants' Exhibit 2? A. It was Exhibit 1.

Q. Exhibit 1, Defendant's Exhibit 1. I now refer you to a section entitled Attendance Data, and a line that says nature of absence. Can you observe that? A. Yes.

Q. And there is an asterisk that refers to something down below. Could you tell us what this refers to? A. One, the student has been absent for more than fifteen days. The record provided for reference **(page 35)** numbers rather than writing out the reasons. The numbers are one, irregular; two, continuous; three, personal illness; four, family illness; five, truancy; six, out of town; seven, suspension; eight, indigent.

Q. To your knowledge, are those code numbers used in any other documents? A. Not to my knowledge.

Q. So those code numbers are especially coded just to that particular question? A. Yes.

Mr. Roos: Nothing further.

REDIRECT EXAMINATION

By Mr. Crawford:

Q. Doctor, referring you to Exhibit No. 7 which you stated is the new Columbus School System form which is to replace what has been marked as Defendant's Exhibit 1 and 2, is there anyplace on document No. 7 which makes reference to reasons for absence?

The Witness: Would you please read that back.

Whereupon the last question was read back by the reporter. **(page 36)**

By Mr. Crawford:

Q. Go ahead. A. There is no place where reasons for absence would be listed in document seven.

Q. One last question. We have made reference — both Plaintiff and Defendant have made reference to a book which has not been marked.

Please mark that as Defendant's Exhibit 8.

The document above referred to was marked for identification as Defendant's Exhibit 8 by the reporter.

By Mr. Crawford:

Q. Doctor, can you please identify what has been marked as Defendant's Exhibit 8? A. It is a document known as the Administrative Guide to the Columbus Public Schools dated January 2, 1973, which summarizes some of the basic rules and regulations of the Board of Education and appropriate law for the operation of the Columbus Public Schools.

Q. Is that document presently in existence? **(page 37)** A. This document is presently in existence and has been presented to and approved by the Board of Education.

Q. Is that document subject to revision during the course of the year at any time? A. The document is revised periodically. The typical cycle is annually before the beginning of the new school year.

Q. Doctor, can a document be supplemented by other documents from your office or the office of Pupil Personnel? A. This document can be supplemented. It is not intended to be the total compilation of policies or rules and regulations, but those that appear to occur most commonly.

Mr. Crawford: Nothing further.

RECROSS EXAMINATION

By Mr. Roos:

Q. Referring back, you mentioned that other things could appear in the cumulative record folder; is that not correct? Things other than the exhibit that has been mentioned? A. That is correct.

Q. Is it beyond belief that a letter of **(page 38)** suspension or notation of suspension or expulsion could appear?

Mr. Crawford: I object to the form of the question, beyond belief.

Mr. Roos: Let me rephrase the question.

By Mr. Roos:

Q. Could it happen? A. Yes.

Mr. Roos: Nothing further.

Mr. Crawford: Doctor you have the right to read this deposition prior to it being submitted to the court. You have a right to sign the deposition. If you wish to waive your signature and assume that the court reporter has gotten everything down, you may do so.

The Witness: I assume she did, but I would prefer to read it.

DOCTOR JOHN ELLIS

(Certificate of Court Reporter omitted in printing)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT
EASTERN DIVISION

Case No. 71-67

(Title Omitted in Printing)

Deposition of Phillip Fulton, the Defendant herein, called by the Plaintiff as if on cross examination under the statute, taken before me, the undersigned, Deborah M. Guedry, an official reporter within and for the State of Ohio, at 270 East State Street, Columbus, Ohio, on Wednesday, June 27, 1973, commencing at 1:00 p.m., and concluding on the same day; pursuant to the stipulations of counsel hereinafter set forth; said deposition to be read in evidence on behalf of the Plaintiff upon the trial of the above entitled cause. **(page 2)**

APPEARANCES:

PETER ROOS, Harvard Center of Law, 71 Kirkland Avenue, Cambridge, Massachusetts, appearing on behalf of the Plaintiff.

DENIS MURPHEY, of the firm of Patchen, Murphey, and Allison, 8 East Broad Street, Columbus, Ohio, appearing on behalf of the Plaintiff.

DALE CRAWFORD, Official City Attorney, City Hall, Columbus, Ohio, appearing on behalf of the Defendant.

THOMAS BUSTIN, Official City Attorney, City Hall, Columbus, Ohio, appearing on behalf of the Defendant.

STIPULATIONS

It is agreed and stipulated by and between counsel for the respective parties herein that this deposition may be taken in shorthand by Deborah M. Guedry, who may later, out of the presence of the witness, transcribe, or

cause said shorthand notes to be transcribed; that all formalities as to the notice of the time and place of the taking of the said deposition and the qualifications of the officer before whom taken shall be expressly waived. **(page 3)**

PHILLIP FULTON,

being duly sworn to testify the truth, the whole truth, and nothing but the truth, as hereinafter certified, deposed and testified as follows:

CROSS EXAMINATION

By Mr. Roos:

Q. Please state your name for the record? A. Phillip F. Fulton, principal of Brookhaven High School.

Q. And well, could you give us a brief summary of your work and educational experience? A. Seven years teacher of junior-senior high school, three years junior high assistant principal, two years a junior-senior high assistant principal, five years a junior high school principal, and four years a high school principal.

Q. And in 1970-71, were you the principal at Marion-Franklin? A. Yes.

Q. Were you the superintendant at the time—strike that.

You were presumably also the superintendant during February, March, and April of 1971?

A. I was the principal. I wasn't the superintendant, principal. **(page 4)**

Q. Excuse me. I apologize.

Can you tell us who the assistant principals were, and what their duties were at Marion-Franklin?

All questions that I will ask you from here on out will deal with the tenure at Marion-Franklin, and particularly March and April of 1971.

During that time, could you tell us who the assistant principals were, and what they did? A. Okay. Mr. Oscar Gill and Mr. Richard Collmer, they were delegated responsibilities as the assistants to the principal to assigned duties, specific assignments. They were given assignments in the areas of attendance, discipline, of student relations, curriculum; of course, all in conjunction with their duties associated with me.

Q. I see. In the week beginning March 8 of 1971, it is our understanding that there were disruptions in various activities at Marion-Franklin; is that correct? A. Yes, sir.

Q. Could you describe what transpired during that week? A. On Monday and Tuesday, there were numerous difficulties. That was March 8 and March 9. On March 10, in the morning—this was approximately **(page 5)** 9:00—there were activities being held. The club program was being held at that time. Students were assigned to either a club activity or to a study hall situation during that period. On Wednesday morning, the first incident involved four girls who had left their assignment and had gone into the halls and created a disturbance in the hall and who were challenged by a teacher.

Q. Do you have the name of the teacher? A. Mr. Waltman was the teacher's name.

Q. Could you give us the name of the four girls? A. I would have to go back and look for some of them. I can't tell you all four girls. I would have to try to find that. The students refused to obey the teacher and became belligerent. Two of the assistant principals were called at that time. The girls had just interrupted a club program. They refused to obey and follow the rules of the assistant principal.

I was called to respond to the situation, which I did. These same students that refused to report to class—eventually we did have a conference within the office with these individuals and attempted to find out what their problems were **(page 6)** and alleviate the trouble. They led a sit-in during fourth period on that day about roughly fifteen students. I can't give you the fifteen names. I do not have that information here. These were over by the end of the lunch period. Classes resumed and the day was completed.

During that day we had students—many students who left school with parents due to the tension generated by the incident. There was a pre-warning of this incident which had been given to my assistant principal, Mr. Gill, by telephone by some informed parents that this was going to happen. There was going to be an occurrence. So we did have some idea that there would be some kind of a disruption that day.

Q. We are still talking about Wednesday? A. Wednesday, March 10, 1970.

Also a student, who I can't identify but is not in this particular memo, told me that there would be some problems.

Q. Are you referring to a memo of some sort? A. I have a resume of the things that happened this particular week that you are talking about. This is a log that I kept.

Q. And you are referring to that now? **(page 7)** A. This is what I am looking at, yes.

Reverend Talley, a minister that was in that community, had called to ask and see me on Thursday morning, on Thursday, March 11.

Q. Sir, could I go back to Wednesday so we can sort of take this as we go along.

You mentioned a disruption by four girls. Were you personally present during the course of this? A. I discussed with the four girls their problem and sent them back to class without any discipline action, attempting to find out what was going on at that particular time. At that particular time the disruption activity continued in the club where it had started, and I eventually ended up in that club talking to the club and attempting to resolve whatever problems there were.

The club was filled with quite a number that didn't belong there, which was also a disruptive activity.

Q. But were you present at the time that this disruption took place? A. Yes, I was present.

Q. The entire time that it took place? A. I was not present in the hall. Mr. Waltman was present and Mr. Gill, and then I **(page 8)** eventually became involved as they brought them to me.

Q. I see. Then you took four of the girls back to your office and had a conference with them? A. Right.

Q. Were all four present at the time of the conference? A. Yes, they were all there.

Q. And no discipline resulted in this conference? A. No, we thought they had resolved part of whatever their problem was and returned them to their classroom activities.

Q. You remember the names of any of the girls? A. I think Deborah Fox was one. I would have to double check. According to my records Deborah Fox. Another one I know was a girl by the name of Vicki Sutton.

Q. Was Mr. Waltman—was he also at the conference? A. No, he was not involved with this conference.

Q. Okay. Proceed from the conference and sending the girls back. **(page 9)** A. We had a sit-in of about fifteen or so students who sat in the hallway opposite

our lunch room and auditorium whom we permitted to sit. We went about the school activities. By the end of the lunch period, it had dissipated. The students had returned, because they had not not been able to create the situation that they had hoped for. The school day resumed without difficulty from them, approximately period six through nine.

Q. Were the four girls involved in the sit-in? A. I can't really say whether they were right now. I don't remember. I assume that they were. I am sure that a couple of them were, but I don't have anything to document that before me.

Q. So we are now with this sit-in and it has dissipated. Go on from there. A. Okay. We completed that particular day. That night we had a basketball tournament, and we played our basketball tournament.

On Thursday morning, March 11, I was in my office with a parent. This is approximately 7:30, quarter to eight. From that time until about 9:00 I was with this particular parent. We were discussing problems relating to the community and some of his concerns. **(page 10)**

At 9:00 I was called again to the halls where the halls were blocked by students. This time white students formed a section at the door which prevented movement in the halls. This building is layed out so you can stop any movement in the hall by merely blocking one area.

I told the students to report to their home room several times.

Q. These are the white students? A. These are white students blocking the halls, right. The report was brought to me, which I observed myself.

Q. Excuse me. Were any of the white students suspended as a result of this activity? A. No, not of this activity.

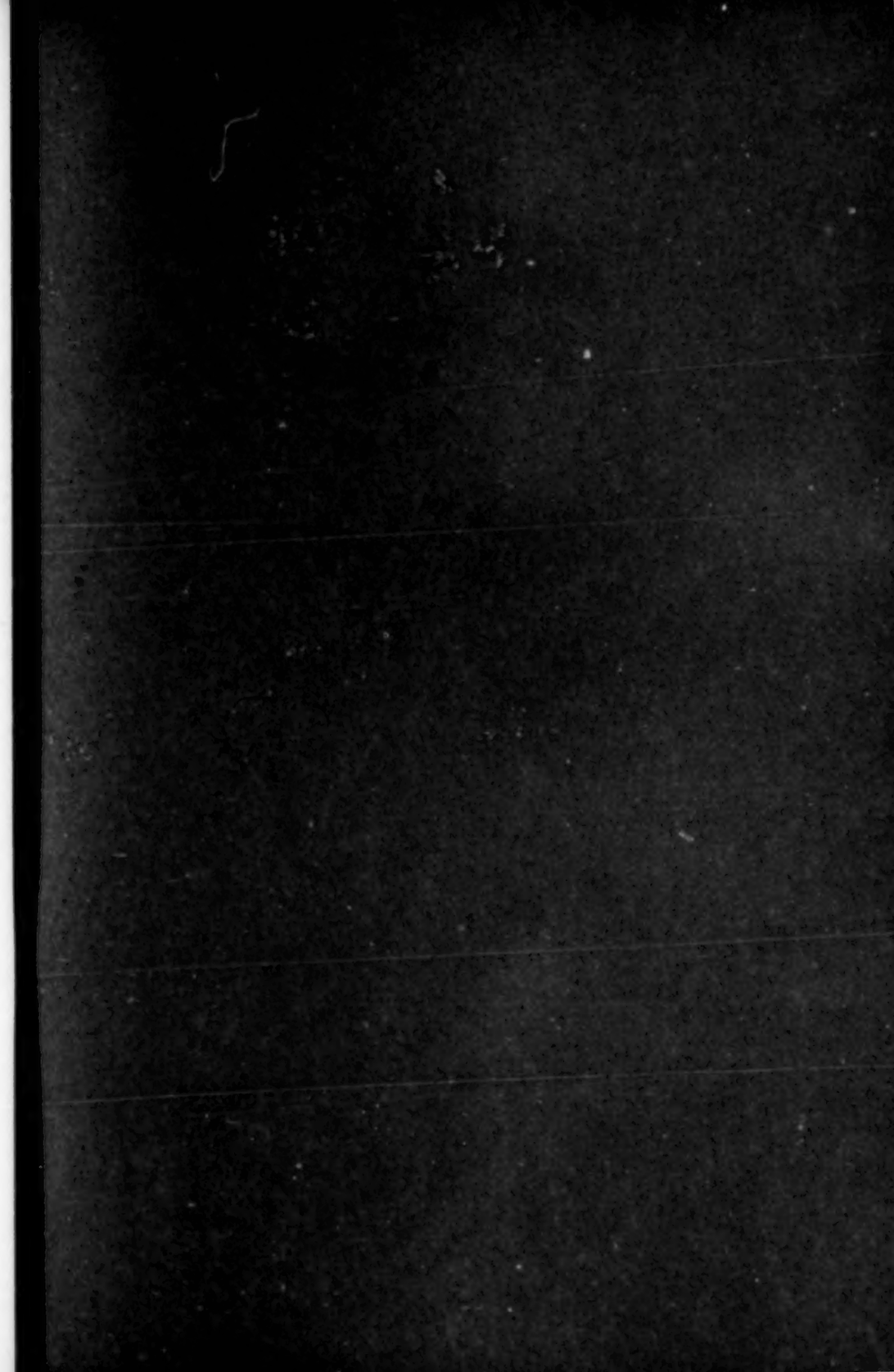
The students were told to report to home room, which they refused to do.

Outside the building we had a group of over-aged for school, twenty to twenty-five I would estimate, strangers in automobiles with implements—who inferred to us that they intended to create some kind of a problem for our school people and for the school. Also in the building we had several—these were white over-aged or above school age people who were inside asking questions where such and such was **(page 11)** going to happen. They were asked to leave the building with reference as we would have them arrested if they did not. These people left the building and returned to their automobiles which continued to circle the school building.

A student by the name of Mike Sanborn appeared and became the leader of the white students in the hall. The white students were told to report to class again or leave the building. They decided they would leave the building, and they proceeded across the street, across Kobell Road where they formed as a group.

Q. Now, may I interject at this time. You told them to either go to class or to — A. Or to leave the building so we could go about using the halls to proceed to our classes. We could not move in the building. The building is completely disrupted, so we cannot ring the bell to have class exchanges for approximately eight hundred or nine hundred students that are ready to go to class.

At this time then, as we cleared the hall then for the passage of class, the black students took the place of the white students in the main hall. They refused to move so that we still had the same **(page 12)** kind of a problem existing. The halls were still blocked, and we had a black and white confrontation then.



IN THE

Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, et al.,
Appellants.

v.

EILEEN LOPEZ, ETC., et al.,
Appellees.

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

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Q. Excuse me. You said that whites had left the building? A. The whites moved across the street, across Kobell Road, which is approximately forty yards, roughly.

Q. And what were they dong there? A. They were standing and defying and mimicking and generally having a spontaneous time. My school communicating agent, Mr. Collmer, Mr. Gill, and I worked with the groups—with both groups, the black group inside and the white group on the outside. It was raining at the time. At this time we notified the superintendant of schools of our problem. At this time we asked for the task force, which is a group of educators working out of the downtown office primarily who relate well to students, who would come in and help decide what the problem was and attempt to resolve it. We also asked for police help to alleviate the problem of these over-age people driving around the outside in the automobiles harassing and intimidating both groups really. The students refused to follow the **(page 13)** orders to return to school.

Q. These are black students? A. These are both black and white. They refused to follow orders to return to school. They said they could not now.

A decision was made by me that we should attempt to communicate with them. We talked to the leadership people of the group. The leader of the white group was Mike Sanborn. Bill Taylor was the leader of the black group. They agreed that the white students would report to the auditorium for discussion. The black students would report to the gymnasium for discussion. They picked five white students and five black students who came to my office. We discussed the problems and concerns. At the time, it was decided that white students would report to the auditorium. The five white students and the one leader from each group was to report to the

office group. This was the group's communication and their agreement.

Q. Do you have the names? A. Mike Sanborn was, I think, was the young man who went to the blacks. I think Bill Taylor — I don't have this documented. I am going on what I remember. This was about a couple of years ago. The **(page 14)** leader from the opposite group, the white leader, talked to the black group; and the black leader talked to the white group. They decided they would like to come together and communicate. In the meantime, the security, the Columbus police, the safety director, Mr. Hughes, was outside the building. They eliminated the problem of the outsiders. I don't know what the dispensation — how they did it. I was not able to be outside and inside and everywhere, but they took care of the police function which was not my function in the first place.

The outsiders were cleared out and all of the people that did not — would not follow directions were threatened with arrest, so the students cooperated and we had the two groups which communicated with rap sessions which were developed then through these two groups of five. We ended up with both groups in the auditorium. This was not the entire school. We had three-fourths of the school in class with their teachers. We had other teachers operating this matter. Safety, certainly of the teachers and all of these students not creating the problem, was uppermost in our mind. They went about the business as they could and attempted to have education in this kind of **(page 15)** disturbance.

Walter and Clifford Tyree came to the auditorium. Both spoke to the group and did an effective job with the white and the black students and did alleviate a lot of whatever pressure there was. The students were attempting to respond, and in many cases the animosity

from the black to the white and the white to the black diminished to some extent.

At 10:30 the school was dismissed officially so that the other students could leave. They were dismissed in an orderly fashion, thinking of the safety of each student as they left. The auditorium was left as a spot to communicate until 10:30. This was agreed to and this was communicated to the students. By 12:30 all students had left the building. It was without any kind of bloodshed or physical confrontation.

Q. Did you address the group at the auditorium? A. Yes, I did.

Q. Could you tell us briefly what your comments were to the group? A. I can't tell you other than I discussed with them the purpose of education and why they were **(page 16)** in school. I also said that we were not going to permit disrupters to control the educational process for the students that were in Marion-Franklin High School and told them that the proper way to deal with any kind of agreements. This was again a situation that had been set up beforehand.

Q. What was that procedure? A. This is: They meet with the principal or his designated designee and bring the agreements to him. If this is not satisfactory, they may go to the administration in the downtown office or if they desire then, they may go directly to the superintendant of the Board of Education. This policy has been established.

Q. Is that a written policy? A. I believe. I can't state the number, but I believe it is written and is in the book that you have.

Q. That was in effect at the time that this took place? A. Yes, sir.

Q. Okay. A. The administrators and the teachers, we meet with parents for conferences. We had a great num-

ber of parents that were concerned. We met with **(page 17)** these groups and then planned. We tried to hear the grievances and alleviate the fears of people who wanted to send their people to school for education and also to attempt to terminate the problem.

The school was closed then on Friday. We had discussions with the teachers concerning the problem, helping them to understand the situation since they were not involved other than to be where they were assigned and with their students. We also met with groups who had requested time to come in and to talk with us.

Then on Monday, we reopened. This was Monday, March 15. The students were told, as I reported earlier, that unless they came to school on Monday with the intention of going to class and following their procedure, then they should not report. So on Monday at 9:00 then, I was again called to the auditorium. We had about — I can't remember — eight or ten home rooms. We had our home rooms located in the auditorium. There are black students who had gone to the auditorium and had taken seats in the auditorium which disrupted completely the possibility of having any kind of a home room situation because they were occupying seats which had been assigned for home room. **(page 18)**

Q. Were there any whites in that group? A. Not as far as I know, no. There were whites in the home room, but there were no whites in this particular group that had been organized to come in and take over the auditorium.

At this time again I was called.

Q. Excuse me, sir. You said the group that had been organized. What evidence did you have that they were an organized group that had specifically designed to take over the home room? A. Well, I was told that this was their function as I came in, that they were not going to the home room.

Q. Okay. A. Names were taken.

Q. Who told you that? Excuse me, who told you that? A. A student by the name of Ronald Carter.

Q. Is he a black student? A. Black student.

Names were taken then. I told the students that they had been forewarned of possible disciplinary action if they did not report with the intention of going to school and following their regular programs. We started to take names of the people that did not **(page 19)** belong here. At this time Ron Carter asked me, "If we report back to home room, will be permitted to go without suspension?"

They reported to their home rooms. The students all left and went back to their home rooms.

Q. How many students were there in this group? A. I really don't have that here. I can't recall. I would assume probably thirty to fifty maybe.

Q. How big is the auditorium? How many can you seat? How many can you seat in the auditorium? A. I think that auditorium seated between six and seven hundred, someplace in there.

After the home room bell rang, the auditorium then was used for classrooms or was used as a classroom. The black students returned to the auditorium. Again, they were told to report to class. They were told three different times to report to the auditorium and again refused.

Q. They were told to report to the auditorium? A. Report to their classroom. No, they were to report to their classroom. The auditorium — the **(page 20)** band used the auditorium as a classroom. First period they were told to report to their assignments. They all had a particular assignment.

Q. Who told them this? A. I told them this.

A student informed me that they were tired of listening to me, and now, I was going to listen to them. They were going to tell me what was going to be done.

Again they were told to return to their classes. The students continued to stand up and cite and interfere with what I was attempting to do. At that time then he was told that he was to be suspended from school for his disruption of the educational program.

Q. What was the name of that student? A. That was Tyrone Washington.

He was told to report to the office which he refused to do. At the time we had security officers in the building. This had been announced by way of the P.A. system also during the morning home room announcements. Of course, many of the students had communicated with these people early during the day. These security officers, Columbus police officers, were asked to remove Tyrone **(page 21)** Washington from the auditorium. At this point the security men were attached by a student and his father.

Q. Did you personally observe that? A. I personally observed this, right.

Q. What was the name of the student? A. Rudy Sutton and Floyd Sutton. Floyd Sutton was a postman who delivered mail to this particular school and had no reason to be in the building at the time — in this part of the building particularly — but was there.

At this time I was also struck by a student as I went to the rear of the auditorium to aid the security man. The names of the students who were involved in these disturbances and the attack were then taken and these people were dealt with individually.

Q. How many people are you talking about now? A. I would have to check. I would say — I am not sure whether this is the number at this particular time or not — but I would say there were between ten and fifteen involved in the incident of the attack of the police officer and on me and in the sitting and continued refusal as far

as leadership in preventing people from going about **(page 22)** their assigned duties and being able to report to their classes.

Q. Did you personally observe? Did each one of these fifteen become suspended, or was each one of these, realizing that figure is an estimate. A. I personally did not; I have two assistants and I have several teachers working with me who also observed incidents. No, I did not observe each one. These were dealt with as the teachers and as the assistant principals observed what went on also. This is why I assume there probably would be this number, but this was the observable number. These were the people who were actually being disruptive that we did see and can be verified.

Q. Could you give the names of the people who were observing? A. By me, by Mr. Gill, by Mr. Collmer. There were several teachers there who, again, I can't recall their names at this time.

Q. Were each one of these students suspended? A. Each student involved in the attack and involved in the ensuing riot was suspended from school.

Q. Each person that reported to you by the people you have just previously named as having been **(page 23)** participants were suspended? A. That is right.

School was attended with approximately seven hundred students. We continued the school day this particular day. By the end of the day, we still had about seven hundred out of approximately twelxe hundred fifty students remaining at that time.

I had a meeting of concerned parents. These were all black parents. Jay Carter, Taylor, Abbotts, and Blacks in my office. I met with nine black representatives at the church of that particular community and over the city. We met with parents. We had a meeting at the church. At that meeting I spent most of the evening. Again, this

was composed of black and white parents so that we were involved in community groups at that time attempting to alleviate and solve the problem. There were fourteen students suspended or recommended for action by the Pupil Personnel officer.

Q. Could you tell us what the role of the Pupil Personnel Office is? Are you talking about the office? A. By our pupil personnel, I mean, our people that work with our pupil personnel.

Q. At your particular school? **(page 24)** A. Right.

Q. You are not referring to the Pupil Personnel of which Mr. Goss is the head at the present time? A. No, No. The action that we refer to them were our people dealing with our attendance and such. We have the right people that we were discussing and then communicated with the parents relative to this, and then made our recommendations from that point.

Q. Who was in charge of pupil personnel at that time? A. That was Mr. Gill. He worked with the attendance. That was one of his responsibilities.

At that time, we called the parents. We notified parents of these people and arranged conferences with each parent involved.

Q. Was this — this was done telephonically? A. This was done over the telephone, right.

This was the prodecure that we followed. We suspended someone; we called the parent immediately. At 5:00 at the South Side Church of Christ, I went with Mr. Harper, one of the teachers, and Mr. Flinn, another teacher.

On Tuesday, March 16, the students returned **(page 25)** to classes and we had little, if any, distraction. We had one fight which took place in the English class between a black and white student, Terry Thomas and Joseph Carr.

Q. Were either of those students suspended? A. They were both suspended from school. They also did damage. They went through a window at the school.

I had a conference that day also with committees from the community where we went in the school including Reverend Jones, James Carr, Ms. Abbott, Ms. Reed, Ms. Gibbs, Mr. Harper, and myself, and my assistant. At noon on that particular day we had a bomb scare called in, and we took the prescribed action there.

On Wednesday, March 17, the students were picketing the area across the building with signs. We had no incidents. They did not create any physical problems neither for teachers or for other students. It was a peaceful picketing of a few students. Again a very limited number. All students were in by 8:30, and we had the regular class schedule. We had a mother call that day and say that she had heard that there would be a bomb scare taking place in the lunchroom. We notified our **(page 26)** security people and took the necessary precautions there. There were students wearing anti-administration badges which again was a peaceful way of reacting to the situation.

That day we had a small fire in the waste can in the rest room. Again we called the police and juvenile bureau of the fire department who reacted then. Again that was a procedure that we must follow. At that time we also had to, of course, evacuate the building.

Thursday, March 18, we had picketing in front of the school again, off the school property. No disruption, it was a peaceful picketing which was permitted without harassment from anyone inside of the building. Again they were in the building in time for their first class. We had an organized plan for related grievances and reporting to the administration to the school which included an opportunity for rap sessions in every English class

throughout the building. The students were permitted to write or to relate anonymously, whichever they wished, their concerns which were again organized and brought in to the administration for recording at a later date to talk about these problems and concerns. They had a fire started in **(page 27)** Room 204, whch was an art room, which was in a container.

Q. Excuse me. You were just beginning to mention fires. Had there been any fires on the 15th? A. No, sir. The first time that I mentioned them was the first one that we had.

The arson squad was again called, and again we had to go through our procedure for fire drills.

On Friday, March 19, we were informed by a student that there would be a peaceful disruption to be held in the morning. We called again for help from the downtown office if necessary. The teachers were kept informed of what was happening. Of course, we reported one hundred percent with the administration and what we were doing in attempting to continue to operate the building as a positive educational experience. On that date, Inspector Miller of the Fire Prevention Bureau was there and followed up the waste basket fire in the art room.

Q. Were any students suspended during these periods? A. No, sir. On Monday, March 22, we had a completely normal day at school. On Tuesday the pickets were back. There were some pickets, but no **(page 28)** problems. Everyone was in by eight-thirty. This was Tuesday, March 23. On Tuesday, March 23, we told the students we would report to them by classes. We met first with the senior class in the auditorium. While I was talking to the senior class, one row of black students stood up as I was speaking to the class and repeated the black pledge. They were led by student Bill Taylor, who gave several verbal sounds and then led the students in their pledge — turned their back and gave the black pledge and then

proceeded to walk out of the auditorium. There were about thirteen all together. I don't have the number here.

Q. Were any of those students suspended? A. Yes, sir.

Q. Which ones? A. The students who left the auditorium were suspended. They left the auditorium without permission. They were suspended. Bill Taylor was suspended from the stage. He was the one that I could identify at that time. We had one student, Mr. William C. Harris, and Ms. William Harris and their attorney came in. This was in about ten minutes of this incident. We had a hearing for this particular case, at that time. **(page 29)**

Q. Was that an unusual sort of procedure? A. I would say that was unusual when someone comes in with an attorney, yes, this is unusual.

Q. What was the common thing? A. Well, can I finish what I am doing here?

Q. Sure. A. At that time Marion Harris was suspended until Thursday, March 24. At that time Mr. Harris stated that there would be legal action taken before the suspension.

Wednesday, March 31, 1971, we received a registered letter from William F. Harris. We had a fire attempt that was started in the wrestling mat, but easily put out. Again, we had to follow the fire procedure. Inspector Miller was informed and was involved in the follow-up. James Brown, known as Nomos X — he is a member of the militant black organization — asked to see me, which we permitted him to do since he did have a sister in the building although he does not reside with that sister. He was in discussing programs of the operation in general of the school. He said it was a concern of his and his organization.

Friday, April 2, 1971, we had a fire started in Room 200. The fire department was called **(page 30)** again at that time. We had apprehended a student by the name of

John Fox for setting the fire. He was referred to the proper officials. Again, he was suspended from school and referred to the fire department. The fire department took the official action as far as Court case. I cannot tell you the dispensation of the Court case.

On Wednesday, April 28, we had —

Q. May I interject? I think we have gone chronologically well past the time that we were particularly concerned with. I appreciate the information. A. That was the last day. From that point on we had a positive school experience. We finished the school year in a positive manner. We completed our school assignments and graduated our senior class as expected.

Q. I am going — you may or may not know. There are some seven named Plaintiffs in this case who attended Marion-Franklin that were suspended. I am going through each one of these and ask you a few questions concerning the suspensions. A. All right.

Q. I will start with Deborah Fox. Could you tell me the date that she was suspended, the **(page 31)** information relied upon for suspending her, the procedures utilized in doing so? A. Do you want her complete record of suspensions before this time or leading up to this time or one specific suspension?

Q. We are talking about the suspension on March 10. A. Beginning with the first period, Deborah was very loud and disrespectful.

Q. Were you personally present? A. She was shouting specific remarks to the assistant principal, Mr. Collmer, such as — this is in a large group of people — "I hate you," and so forth, and contributing greatly to a disturbance and refusing to go to classes. She continued this behavior through period 4.

At about noon she again confronted Mr. Collmer. She was one of the people who was involved in this earlier

disturbance and they eventually had a sit-down. She was still making negative comments at this time in the cafeteria where we had our lunch program. Again she started shouting at Mr. Collmer, "I hate you," and the same kind of things that she had perpetrated in the morning and during the other periods when she was **(page 32)** refusing to go to her assigned classes. She continued to disrupt the school.

Mr. Collmer at this time, told her to report to the office. Again she refused. Mr. Collmer finally contacted the mother who came to the school to pick up Deborah.

Q. At that time, had she been suspended? A. At the time, she was suspended. It was just a matter of physically removing her from the school.

Q. And there would you have met with Deborah yourself prior to suspension? A. Would I have met with her?

Q. Mr. Collmer? Did Mr. Collmer meet with the mother prior to the suspension? A. He talked to the mother prior to suspending her. While the mother was there, she also disrupted the office after coming to the office with loud and abusive language and again disrupted the whole office procedure and everyone in the office.

Q. You personally witnessed that? A. I heard it as well as witnessed it. She again made derogatory remarks to Mr. Collmer and also was rude to Mr. Gill, my assistant principal, who was attempting to work and try to get her quieted **(page 33)** down. She also was rude and disrespectful to him.

She was suspended then with recommendation for another school placement.

Q. That was made at that time of suspension? A. This was at the time that her mother was in to talk to us, right.

Q. Was this March 10? A. This was March 10, 1971.

Q. Did you talk to Deborah in your office or elsewhere? A. In the office, right.

Q. With her mother? A. I had talked on different occasions with the mother. Mr. Gill had communicated with Mr. Collmer. Mr. Gill had also talked with her and her probation officer, Ms. Howard, from the Youth Commission. We had communicated with her, and I also communicated with Ms. Howard after the suspension as late as the next year where we still worked with Ms. Howard. She really seemed to have the most influence with Deborah.

Q. At the time, did you tell her for how long she would be suspended? A. She was suspended for the ten day period.

Q. That was done right on that day? **(page 34)** A. That was done at that time with her mother, right.

Q. Okay. Was Mr. Collmer in the meeting? A. Yes.

Q. Okay. Continue on. A. Who is the next one?

Q. I have some further questions in respect to Deborah. The information we have is that she was suspended again on the 19th. A. Okay. That is right.

Q. Can you tell us what motivated that second suspension? A. She returned to the school with her parent again and repeated the same kind of behavor that she had repeated earlier, again being disrespectful of Mr. Collmer at that time and again being disruptive in the office and continuing the same tactics that she had used previously.

Q. She was ultimately transferred to South High; is that correct? A. Yes, sir.

Q. I think you may have testified to this effect, but I just want to clarify this. You mentioned on March 10, in terms of her being transferred, is that what prompted it? **(page 35)** A. She had a record which extended much beyond that particular day which indicated to us that her capabilities, as far as securing an education, were great.

She was a bright student, but she did not apply herself because she had a position of leadership which, for some reason, necessitated that she remain a militant and in an abusive type situation which did not permit her to carry on her school activities and which was brought about from her days in junior high school. The girls that followed her expected her to react, and it kept her in a complete state of incapacity to be able to communicate with her teachers, as she was capable. It was our assumption that she did have potential to learn and to achieve. In the environment that existed at this time, it was going to be impossible, therefore, for her best interest, we felt she should be transferred to a different school where she could perform; which I understand she did perform well.

Q. Were there any other meetings with her or her parents other than the ones on the 10th and the 19th which you have described? A. No, this is all I have here in front of me. This is — we have talked — we had parents in. **(page 36)** We talked to the parents by telephone. She had brought food in and was eating and swinging her lunch bag in the classroom.

Q. Were there any earlier — Doctor Ellis mentioned that certain schools had school codes of some sort. Was there such a thing in effect at Marion-Franklin at this time? A. What do you mean by code?

Q. Was there any sort of a written statement of prescribed activities by students? A. Yes. We have a handbook.

Q. And it was in effect during this March-April of 1971? A. Right.

Q. Could we possibly get a copy of that? A. I don't remember if I have that particular one or not. This is 1969-70. They were updated and each student, as they came to the building, each tenth grader in the building was given a copy of that.

Q. Might you have in your files a 70-71? A. This is what — I am not at that school any more. This is what I had in the file. That is why I brought it, and one for the new school, too.

Q. I assume you wouldn't mind if we ran off a copy of that or something? **(page 37)** A. No.

Q. A few more questions with respect to Debbie Fox. On March 10, you stated that she had periodically yelled and shouted, "I hate you," at Mr. Collmer. Did she engage in any activity? A. She refused to go to class. She was involved in areas where she did not belong.

Q. Mr. Collmer told you that? A. No, this is where she was.

Mr. Bustin: Did you se her?

The Witness: Did I see her in this particular situation? I don't remember whether they brought her to me or whether I was in that particular situation.

By Mr. Roos:

Q. You were the one that actually made the suspension; is that correct? A. I think Mr. Collmer probably made the initial suspension here. I don't have that. He would have done this after conferring with me. I am not sure whether I made it, or whether Mr. Collmer made the actual phone call. It was my decision that she be suspended.

Q. And on the 19th, could you describe in more particular detail what it was that Deborah Fox **(page 38)** did that resulted in the second suspension. A. She again created a disturbance in the office and refused to cooperate with Mr. Collmer and was again abusive and disruptive.

Now, I can't say because I was not there.

Mr. Crawford: The question was: Did you personally know?

The Witness: I do not.

By Mr. Roos:

Q. On March 15, according to our records, Clarence Byers was suspended from Marion-Franklin. Do your records correspond with that? A. Yes, sir.

Q. Again, as we did with Deborah Fox, I would like to know specific incidents. A. He was in the hall encouraging others to refuse to go to class and to do as he was asked to do. He was told to report to his classroom.

Q. Who told him to report? A. I did that personally.

Q. And he refused to go to his classroom? A. That is right.

Q. And that was the incident that resulted in his suspension? A. He refused to report and continued to **(page 39)** encourage others to not report and to continue to disturb us.

Q. Where did this occur? A. In the main hall of the school building.

Q. You mentioned, I believe, that at one time there were some students blocking the paths in the morning of the 15th. Was that the time that he was suspended? A. No, that is a different occasion. I talked to you about a different date.

Q. Okay. I think you are right. I am referring to the previous Thursday.

I would like a little more background on really what Byers did, at what time in the morning, and in the context of what you have already described as happening on the fifteenth, and previously given us a rundown of other details. A. I can't give you the exact time that this occurred. I don't have that documented.

Q. In the context of what you have previously told us about this thing that occurred on the 15th. A. He was included in this group that was early in the morning. I assume that was the day time. I do not have the exact times. I can't remember exactly what time it was. His mother

was called and **(page 40)** we conferred with her at that time also.

Q. Okay. A. This young man was one of my football players and had not been a militant or a disrupter. This was a different type of reaction for him.

Q. Did you make any note of the fact that maybe he had joined with the descendants in this particular incident? A. I would not make a judgement. I assume that he was convinced that what he was doing was right, he was still interrupting the school and preventing a normal operation of our school. He was at school later. He had represented the school in a number of things and did after the suspension.

In the following year he was my representative to the council that met talking about disruptions and working with students.

Q. You personally observed that that led to the Byers incident? A. It was face to face confrontation.

Q. And that was refusal to go to class? A. He refused to go, clear the hall, and refused to go to class and also made some remarks that incited others to do the same.

Q. Did you meet with his mother? **(page 41)** A. I met with his mother on several different occasions.

Q. Did you meet with her on several different occasions that morning? A. I can't say whether I met on that morning. I talked with her, and I talked with her previously. We talked later and again. The next year the mother was the one who was attempting to help maintain a positive atmosphere for education in that building.

Q. Do you recall Ms. Glenda Jackson being present at the time of the Byers suspension? A. Do I recall?

Q. Yes. A. I do not.

Q. She could have been or might not have been? A. She could have been or might not have been. I do not know Ms. Glenda Jackson.

Q. The same day, March 15, our records indicate that Rudolph Sutton was suspended. Do your records reflect the same thing? A. That is right.

Q. Could you tell us what facts were relied upon in suspending him? A. He was in the auditorium. Again I observed Rudy. I knew exactly where Rudy was seated. During the disruption in the auditorium on that date, he attacked the police officer — physically attacked the police officer — as the police officer attempted to remove a student who had been disruptive. With his father they knocked the police officer to the ground.

Q. Was the police officer in uniform? A. No.

Q. The police officers were not — they were not in uniform? A. They had been announced. We had told the students that we would have security people, as I told you previously, during the home room period. As I said before, they were there early in the morning and had communicated wth many students in the hall. So it was a known fact that there were policemen and that they were present to see that we did have a peaceful and orderly school day.

Q. Did you have any conversation with Rudolph on March 15? A. Mr. Gill, my assistant, talked with Mr. and Ms. Sutton on that day, I believe.

Q. Do you know where that conversation took place? A. In Mr. Gill's office, right. **(page 43)**

Q. Were there any other people present? A. The sister, Vicki.

Q. Vicki Sutton? A. Vicki Sutton and Mr. and Ms. Floyd Sutton.

Q. Now, how long was Rudolph suspended? A. He was reassigned to another school — another school assignment. I can't tell you the date that he reported to the other school. I had a conference with him on the 25th also. They had a conference with Mr. Gill on the 16th of

March. I had a conference on the 25th. At that time Rudy was told he would be reassigned to another school to complete his education.

Q. Was this as a result of the activities on the 15th? A. That is right. Again he was a football player who had — I had used as a hall monitor and had been able to react in a positive fashion and was recently decided that he had to get involved with the disruptive situation. Again we were interested in his continuing his education and get his high school diploma.

Q. Was there any correspondence sent to Rudolph by your office? A. Yes. **(page 44)**

Q. Do you have copies of the correspondence? A. No, I don't have anything. All I have got are these copies that I had from Mr. Gill's file.

Q. The conference on the 15th, was with Mr. Gill then? A. Mr. Gill, right.

Q. Were you in attendance? A. No, I was not.

Q. Had Mr. Gill been present at the time of the occurrence? A. Yes, he had. As I stated before, Mr. Gill and Mr. Collmer were all there.

Mr. Crawford: Let's take a short recess.

(Short recess.)

By Mr. Roos:

Q. Our records indicate that Susan Cooper was suspended on March 15. Do your records correspond with that? A. Correct.

Q. Can you tell us what facts were relied upon to suspend her? A. Again that was a face to face confrontation with me in the hall, same spot in the hall as we discussed previously.

Q. What took place at that confrontation? **(page 45)** A. Refusal to go to class, truant from her assigned responsibility. Insolence, refusal to leave.

Q. To where? A. To leave the hall to her assigned responsibility.

Q. So you told her to go to her class, and she said, "No," and that was why she was suspended? A. And she continued to encourage others to do the same again.

Q. She give you any reasons why she didn't want to go to her classroom or to leave? A. No.

Q. Nothing whatsoever? A. I have no record of anything like that. I don't recall anything of that nature.

Q. Did you suspend Susan Cooper? A. Mr. Gill did the actual suspending. I had to approve all of the suspensions.

Q. Do you know what procedure Gill used to suspend her? A. He called her to the office. He called the parent — contacted the parent — and followed up with a letter to the parent followed by the arranged conference which is in the letter. **(page 46)**

Mr. Crawford: Possibly we can save some time with Cooper and the rest by stipulating that the procedure used was basically the same through all the people.

Mr. Roos: I would like to go much quicker.

Off the record.

(Discussion off the record.)

Mr. Roos: On the record.

By Mr. Roos:

Q. For the moment, forgetting about Susan Cooper and named individuals, could you tell us what the general procedures were at Marion-Franklin for effectuating a suspension? A. The student would be given an opportunity to tell their side of whatever the situation might be with either an assistant principal or principal — whoever would be doing the suspension. After it was determined that there would be a suspension, then the parent is called. If the parent is not at home, then the student is retained at the school until such time that the normal

school day is over and the parent can be reached. The suspension is followed by a letter stating the reason for suspension, and if a conference has been prearranged **(page 47)** by the parent or guardian and the school, that is included in the letter to verify the time of the conference. The conference then would be held with the parent or guardian and student and satisfy completion of the problem.

Q. What facts dictated whether you or Mr. Gill or Mr. Collmer held the initial conference to suspend? A. Basically the assistant principals are the disciplinaries. They held the discipline in a given school. The majority of times the incident does not occur with an administrator. It occurs in a situation where a teacher refers it to administration. It would depend upon who was available, who the teacher may refer the incident to. It can be one or the other of the administrators.

Q. Okay. Taking — since we are dealing in general, taking a hypothetical suspension which you indicated ordinarily are initiated by teachers, what would be the step by step that would be followed? A. The teacher would send to the office in written form, and almost all schools in Marion it was to be written. We had a form that we followed indicating the incident, what had happened, and this was brought to the office at the time the student was **(page 48)** brought to the office. The administrator then would go over the incident as written or as dictated by the teacher with the student. The student then would be given an opportunity, if the student didn't agree with the way it happened, then he would send back for the teacher and bring the teacher in who if we have some reason to see if there is a discrepancy. We then ask the teacher to interpret what he has written for us. If there is a large discrepancy where the student would deny it and the teacher would confirm it, then we

would react upon this information according to what the teacher tells us. Then if it is deemed that there is a suspension, you follow the procedure that I have already formulated. You call the parent first and then send the student home. Again if we can't find the parent, we try to keep the student until his normal school day is over so they are retained until their school day is completed. The parent, if he can be contacted in the meantime, then would be informed of the situation. This would be followed then by a letter stating again what we would discuss but including also the time of the appointment, if it has been prearranged. If not, the parent may get in tomorrow. They might say that they can get in tonight and maybe have time **(page 49)** to see the administrator and that would be set up at that time.

Q. Now, the procedure that you were describing there is the procedure you used in ordinary situations? I mean, they are used not when the school is going up in flames, but in an ordinary suspension type of situation? A. Right.

Q. Now, you mentioned that if the student contested what the teacher said, the teacher then would be called in, or occasionally the teacher would be called in? A. Right.

Q. What would happen if there was still dispute? A. Then the teacher's word would be the deciding factor.

Q. Now, you mentioned that sometimes — strike that.

Assuming that there had been a suspension, then the phone call follows to the parent and then a letter is sent out the next day; is that correct? Or maybe the same day?

A. Same day — preferably the same day.

Q. How often are further conversations set up **(page 50)** with the parents? Is that fifty per cent of the time? A. I don't understand what you are asking me.

Q. It seemed to me that you stated that sometimes

further conversations are set up with the parent to dispose of the matter. A. This is ninety-five per cent of the time where the parent comes in to the conference with the administration to discuss the problem and resolve the problem. It is the parents' responsibility for the child, and we feel it is our responsibility to deal with them.

Q. However, the parents are informed of this subsequent conference? A. As I said, by telephone. If you can't contact them, we either ask them to give us a time or we will give them a time. We have a conflict, we call and arrange another conference.

Q. Traditionally, what is discussed at these conferences? A. The problem, the individual, we talk about their school record. We get their entire school record. We talk about their academic problems if they exist. We talk about their potential. We talk about their goals. It is a conference to remedy the **(page 51)** problem and you try to find a solution so that the student is successful in his schooling.

Q. Is it a conference to verify the facts supporting this suspension, or is it more a conference to determine future placement? A. No, because almost always placement is right back where they are. It is to communicate with the parent, as part of my responsibility, the problem that exists and ask for their help. We inform them and then find out what directions we can take that will eliminate the need for further problems.

Q. I see. I think we have pretty well discussed that.

I will proceed more quickly. I realize we are getting bogged down.

Our records indicate that Tyrone Washington was suspended on March 15; is that true?

A. That is true.

Q. Will you inform us on the facts in which the suspension was based? A. Tyrone Washington, a senior

student was in the auditorium approximately 9:05. The entire group in the auditorium had been told to report to their assigned classes. They refused. Tyrone **(page 52)** Washington stood at his feet and told me to listen to him that he had listened long enough to me and that they were going to tell me how it was going to be done.

At that time Tyrone was asked to leave and report to the office. He refused. The security officers were asked to remove him to the office.

Q. Okay. What transpired in the office? A. Well, as you remember, there was quite an incident before we got to the office. After reporting to the office, then Tyrone's mother, Ms. Vance, was in the building at that time. She was told at that time that he would report home with her that he was suspended. I had a conference and then on the 16th, Mr. Gill had a conference with Ms. Vance and Tyrone. I had a conference on the 25th with Ms. Vance and Tyrone. At that time he was referred to a different school placement.

Q. Okay. And this referral was as a result of the activities on the 16th? A. Continued disruptiveness.

Q. On the 15th? A. Right.

Q. Bruce Harris. Do you have his file in front of you? **(page 53)** A. He was suspended on the 23rd of March?

Q. Can you describe the activities that he was engaged in that resulted in his suspension? A. He was disruptive in the assembly program and walked out of the assembly that morning. He continued to be disruptive.

Q. Was he one of the students that gave the black pledge, if my recollection is correct? A. Yes, that is correct.

Q. Now, they gave — what is the black pledge? A. I can't recite the black pledge.

Q. I am not asking you to recite it. A. Yes, it is an oral statement with the right hand clenched and held out. I can't give you the wording.

Q. He, with several other students, stood up and gave the pledge and walked out; is that correct? A. Right.

Q. And it was because of that activity that he was suspended? A. That is right. This was still while I was talking to the entire senior class. It wasn't an isolated incident.

Q. I am going to show you a letter to Bruce **(page 54)** Harris received dated March 23.

Mr. Crawford: Do you want to mark it?

Mr. Roos: Mark this as Plaintiff's Exhibit 3.

The document referred to was marked for identification as Plaintiff's Exhibit 3 by the reporter.

By Mr. Roos:

Q. Okay. You have seen this. I am now handing you a copy of Exhibit 3. A. I have a copy of that yes.

Q. Is it possible for you to explain what the second paragraph of that letter meant?

Mr. Crawford: I will object. The letter is stated in evidence who wrote the letter. I will object to his explaining what somebody else intended by a paragraph from the letter not written by that individual. I will instruct the witness not to speculate. If he can read it that is all right, but don't speculate what somebody else had in their mind.

Mr. Roos: Well, are you instructing him not to answer? **(page 55)**

Mr. Crawford: I am telling him not to speculate. If you want to ask him on any rule —

Mr. Roos: Strike the question.

By Mr. Roos:

Q. Mr. Fulton, do you have an independent knowledge of a letter of November 6, that may have been used in determining the propriety of a suspension on the 23rd of March of 1971? A. Propriety of suspension?

Mr. Crawford: What is the question?

By Mr. Roos:

Q. The question is: Do you have any independent knowledge of the letter referred to in this letter, the letter being referred to as apparently November 6, 1970?

Mr. Crawford: Ar you asking if he has a copy?

Mr. Roos: Now I am asking if he has any previous knowledge?

The Witness: Yes.

By Mr. Roos:

Q. Do you have a copy of that letter with you? A. Yes, I do.

Q. Might I see a copy.

What was the procedure utilized in **(page 56)** suspending Bruce Harris?

A. The usual procedure. He was brought to the office and Mr. Gill communicated with him and attempted to contact his brother whom he was living with. His brother did not report.

Q. Do you know on what date that suspension ended? A. October 30.

No, that is a different one. March 30, March 30.

Q. Was he transferred, or did he return to Marion-Franklin? A. He did not return. He just did not return. He eventually transferred to Central Evening School.

Q. But he could have returned? A. He could have returned on the 30th to discuss the situation or to be reinstated for whatever dispensation would have been taken care of. But we had no further contact with the brother even.

Q. I have no further question of a more general nature. Not dealing with any particular student, the letters that we have in our possession — several of the letters which we have in our possession — indicate the students being suspended and are signed by the assistant principal, Mr. Gill, **(page 57)** Mr. Collmer.

Those — several of those — indicate I have suspended today. If you question me, I can show you. Would you like to see a copy?

We would like to know if that can be taken literally. What procedure is utilized — strike that.

Do you delegate the authority to these people to suspend pupils? A. That is right.

Q. Would it be — might they suspend them without consulting you? A. Right.

Q. Okay. Thank you very much. That is all. Off the record.

(Discussion off the record.)

Mr. Roos: On the record.

Mr. Crawford: With respect to Plaintiff's Exhibit 3, I don't know its probable identification. I don't know if it was identified at all.

Mr. Roos: Okay. Plaintiff's Exhibit 3 has already been marked. It is a letter dated March 23, 1971, from Oscar Gill to Mr. and Ms. Freddie Robinson and indicates that Bruce Harris has been suspended from school. (page 58)

Mr. Murphy: Are you familiar with that letter, Mr. Fulton?

The Witness: Yes.

Mr. Murphy: And is that written on Marion-Franklin stationary?

The Witness: Yes.

Mr. Murphy: And is that the signature of Mr. Gill that was under your employ?

The Witness: Yes.

Mr. Crawford: Note my objection to the admissibility of it. Let it go and leave it attached as an exhibit.

Mr. Fulton, you have the right to read this and go through before it gets introduced to the Court. If you would like to, you can waive your signature on it.

The Witness: I would rather look at it.

PHILIP FULTON

(Certificate of Court Reporter omitted in printing)

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action 71-67
(Title Omitted in Printing)

PROCEEDING

Before the Honorable Joseph P. Kinneary, Chief Judge, sitting at Columbus, Ohio, July 16, 1973.

(page 3)

DWIGHT LOPEZ,

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Roos:

Q. Please state your name. A. Dwight Lopez.

Q. Mr. Lopez, were you attending Central High School on Friday, February 26, 1971? A. Yes, I was.

Q. On that date were you suspended from Central High School in Columbus? A. Yes, I was.

Q. Who suspended you? A. Mr. Parks, the principal.

Q. How did you find out that you were suspended? A. When I got home, there was a call to my house from Mr. Parks. When I was at home, there was a call to my house from Mr. Parks, stating that I was suspended.

Q. You were at home rather than at school? A. Yes, sir.

Q. Why were you at home? A. School was dismissed that day.

Q. Did Mr. Parks tell you personally that you were suspended? (page 4) A. No, he did not.

Q. He told you on the telephone? A. Yes.

Q. At the time that he called you, did he tell you of the reasons for your suspension? A. No, he did not.

Q. Did you do anything that day at the school?

The Court: What day are you referring to?

Mr. Roos: February 26th.

The Court: Is that the last day you were in school, Mr. Lopez? A. Yes, sir.

The Court: You may proceed. Did you go the full school day on that day? A. No, sir, school was let out around 10:30, 11:00 o'clock, sir.

The Court: The whole student body was dismissed at that time?

The Witness: Yes, sir.

The Court: You with them?

The Witness: Yes, sir.

The Court: All right. You may proceed. **(page 5)**

By Mr. Roos:

Q. On February 26th, did you do anything that violated any rules, to your knowledge, rules of the school or other rules? A. No.

Q. How many other students on that day were suspended, to your knowledge? A. To my knowledge, at least — well, a few that I know, 75 that I know personally but there were more.

Q. At any time prior to receiving the call from Mr. Parks, did you have an opportunity to tell your side of the story? A. No.

The Court: Why don't you ask him if there was a hearing conducted in connection with the suspension.

Q. (By Mr. Roos) At any time prior to the suspension by Mr. Parks, were you given a hearing to tell your side of the story? A. No.

Q. What was the first thing in writing which you received? A. I received a letter the next day after I was suspended from the school stating that I was suspended.

Q. Is that letter dated February 26? A. Yes, it was. **(page 6)**

Mr. Roos: Your Honor, that is Exhibit 1 A. It was agreed between plaintiffs and defendants that I would not have to identify it otherwise.

The Court: Fine. You may proceed.

By Mr. Roos:

Q. You received this after you had been suspended; is that correct? A. Yes.

Q. Did you receive a further letter dated March 1 from the school authorities? A. Yes, I did.

Q. That is Exhibit 1 B, Your Honor.

Were you already under suspension when you received this letter? A. Yes, I was.

Q. Did you receive a letter dated March 5 setting an appointment at Pupil Personnel for March 8th? A. Yes, I did.

Q. That is 1 C, Your Honor.

Were you under suspension at the time you received this letter? A. Yes, I was.

Q. At the time you received this letter, had you been out of school approximately a week? **(page 7)** A. Yes.

Q. Prior to March 8, 1971, did you have any opportunity to meet with any school officials? A. No, I did not.

Q. Did you keep the March 8th appointment? A. No, I did not.

Q. Can you explain why not? A. There was a rally at the Board of Education and we could not get in, my mother and sisters and I.

Q. Prior to March 24th, did you have any correspondence, either orally or in writing, from anybody at the school department, either at Central or anyone in the Columbus School System, did you have any correspondence whatsoever? A. No, I did not.

Q. Between March 8th and March 24th did you have reason to believe that you were suspended from school? A. Yes, there was — Well, at the rally they had at the Board of Education, the Board reinstated the students that were suspended, and they were to return to school. I did return to school that following afternoon.

The Court: On what date was that, the following afternoon, March the 9th?

The Witness: It was the day that I had the appointment set up for the Pupil Personnel, sir. **(page 8)**

The Court: That was March the 8th?

Mr. Roos: March the 8th, Your Honor.

The Witness: The students were to be reinstated but I went to school and they would not open the doors. All the doors were locked. I did knock or pound on the door and one teacher did come. I believe it was the gym teacher, men's gym teacher, and he wouldn't let us in. We told him that we were reinstated and he said that the school had no prior knowledge to us being reinstated and refused to open the door.

By Mr. Roos:

Q. During the period between March 8th and March 24th, did you and/or your family, members of your family, attempt to contact the school officials concerning your suspension? A. Yes. My sister wrote a letter and she called. My mother called, but as far as we could get was the secretary and she kept telling us that the guy, the head of Pupil Personnel, either wasn't in or he was busy, so that's as far as we could ever get.

Q. Were any of your calls returned? A. No, they weren't returned.

Q. On March 24th did you receive a letter transferring you to another school in the Columbus system? **(page 9)** A. Yes, I did.

Q. Had you requested this transfer? A. No, I did not.

Q. Were you given any hearing prior to the transfer? A. No, there wasn't.

Q. Did this transfer result in any difficulty to you? A. Yes, the difficulty would be when my mother and I went down to Adult Day School, that is to the school I was transferred to, the principal of Adult Day School did have the impression that I was definitely a trouble

maker, and he stated I would not be able to take any courses that I wasn't making a B average.

Mr. Bustin: Your Honor, I am going to object to what somebody else is saying. It is heresay.

Mr. Roos: Your Honor, it's not being offered —

The Court: Overruled. Go ahead.

A. Any subject I wasn't making at least a B average or above, I would not be able to take in Adult Day School. His attitude was bad, so I didn't go to Adult Day School. Instead I just didn't go.

By Mr. Roos:

Q. You ultimately did get into another school though; is **(page 10)** that correct? A. Yes, I did.

Q. When you did get in, did you have difficulty making up the work that you had missed during the time you had been out of school? A. Yes. I never did catch up fully to what I did miss and the change from one way of teaching to another made it a little worse than what I had already had.

Mr. Roos: Your Honor, the letter of March 24th is Exhibit 1 D.

Nothing further of this witness.

The Court: You may cross-examine, Mr. Bustin.

CROSS-EXAMINATION

By Mr. Bustin:

Q. Mr. Lopez, how old were you at the time that you were suspended? A. I was 19.

Q. Nineteen years of age.? A. Yes.

The Court: What year of school were you in at that time? A. My senior year, sir.

Q. What was taking place at the school at the time that **(page 11)** the whole school was dismissed? A. There was a student disruption.

Q. Did the Pupil Personnel Department make any attempt to set up a meeting with you on or about March

5th? A. Yes, there was. I did have — Well, I can't remember the exact date, but there was an appointment set up because I did receive a letter saying there was an appointment.

Q. Did you keep it? A. No, I did not.

Q. What was the nature of that communication that you received on March the 5th? Who did you receive it from?

The Court: Was it addressed to you or your parents? A. It was addressed to my parents.

The Court: What did it say? Did it request that you and your parents meet with the school officials? A. Yes, sir, that's the way it was.

The Court: Did it set up a date for meeting with them? A. Yes.

The Court: What was the date? A. March the 8th.

The Court: All right. **(page 12)**

By Mr. Bustin:

Q. When you appeared at the Pupil Personnel Department on March 8 — Let's say first: Did you appear there on March 8th? A. Yes, I did appear.

Q. Were your parents with you? A. Yes, she was, my mother.

Q. Your mother was with you? A. Yes.

Q. I believe your testimony is you did not keep that appointment? A. It was impossible for me to keep the appointment. They had the doors blocked with people, and I could not get in.

Q. Did you try to get in? A. Yes, sir. Yes, there was an attempt to get in.

Q. I didn't hear you. A. Yes, we did try to get in.

Q. Did try to get in. Who was blocking the door? A. The people in the rally, the people, several hundreds of people.

Q. Hundreds of people. Mr. Lopez, I take it you have graduated from Columbus Public Schools? A. Yes, I have.

Q. What date did you graduate, do you know? **(page 13)** A. I graduated June 10th of last year.

The Court: Of 1972? A. Yes, sir.

The Court: Does that mean there was a year's delay in your graduation? A. Well, sir, I was in night school and you can only take four subjects a night and each subject is half a credit.

The Court: When you did not go to the school to which you were ordered to go, after you were suspended from Central High School, wasn't it — A. Yes, sir.

The Court: — did you then decide to go to night school? A. Yes, sir, that's when I decided to go to night school.

The Court: How old were you then? A. Eighteen. Nineteen, sir.

The Court: Nineteen? A. Yes, sir.

The Court: So, at that age, did you have a choice as to where you would go to school? A. I don't understand, sir. **(page 14)**

The Court: Maybe you can inform me, Mr. Bustin. I think the compulsory age is 18; isn't it?

Mr. Bustin: That's right, Your Honor.

The Court: When an individual is 19, can they choose where to go if they are, let's say, academically eligible?

Mr. Bustin: The answer to that question is normally yes, the individual who is over the compulsory age would have a choice.

The Court: Then would you agree that this witness at the age of 19, when he chose not to go to the school to which he was ordered transferred, and instead chose to go to night school, had the right to do that?

Mr. Bustin: I would agree with that.

The Court: So, after you left Central High School, Dwight, you started to night school; is that correct? A. Yes, sir.

The Court: In relation to the 25th of March of 1971, when did you start to night school? **(page 15)** A. I started night school in September the same year, sir.

The Court: So, you didn't go back to school either in the day or the night after you were suspended from Central High School and until you started to night school the following September? A. No, sir, I couldn't get in because the semester had —

The Court: My question to you is: After you were suspended from Central High School on February the 26th of 1971, you did not go to school any place until the following September; is that correct? A. Yes, sir.

The Court: Go ahead.

By Mr. Bustin:

Q. Mr. Lopez, where did you go to school during the 68-69 school year? A. It was in the vicinity Salem, Philadelphia, Comer Heights, Pennsylvania, just outside of Philadelphia.

Mr. Bustin: Did you attend any school here in Columbus during that year. A. Well, I went there one full year. I can't remember.

Q. Do you know, Mr. Lopez, at the time you were suspended, how many credits you had earned in school? Say this was your senior year. Do you know how many credits you had earned at that time? **(page 16)** A. No, I don't.

Mr. Bustin: That's all the questions I have.

The Court: Do you have any further questions, Mr. Roos?

Mr. Roos: Just one further question, Your Honor.

The Court All right.

REDIRECT EXAMINATION

By Mr. Roos:

Q. Mr. Lopez, to your knowledge were there many people attending Columbus school, or in your personal knowledge, who were 19 years of age? A. Yes, there was.

Mr. Roos: Thank you. No further questions, Your Honor.

The Court: Dwight, when you received a notice of suspension, did it say how long you were suspended? A. No, it didn't say.

The Court: Did anyone ever tell you either verbally or in writing why you were suspended? A. No, sir. **(page 17)**

The Court: Are you sure? A. Yes, sir, I am sure.

The Court: You stated a few moment ago that on the 26th of February, 1971, there was a student disruption at Central High School; is that correct? A. Yes, sir.

The Court: What was the nature of that disruption? What happened there, Dwight? A. It started during Black History Week. The students wanted to put on their own black history show and they requested the use of the auditorium, and the request was granted; but, when they found out who the speakers were, or would be, they refused. That led to tension. A few weeks later —

The Court: Let's come up then to the 26th of February. You were in school that day; weren't you? A. Yes, sir.

The Court: You said there was a student disruption. What was the nature of the student disruption? Who did what? A. Two students were shot that night, two black students.

The Court: Were shot? A. Yes, by white students from another school. **(page 18)**

The Court: During the day? A. No, it was —

The Court: I am talking about, Dwight, during the school day of February the 26th. You stated on your direct examination that there was a student disruption at the school that day. I am trying to find out from you if you know, and I assume that you know because you said there was a student disruption there, what was the nature of that disruption? Who did what? A. The students overthrew tables.

The Court: Where were the tables? A. In the lunch room, and broke a few windows, and that's all that I could see that was done.

The Court: Did you take part in that disruption? A. No, sir, I was in class. I had what they called free study in the lunch room at the time. The students came in the lunch room and started overthrowing the tables, and I and a few more friends of mine, we walked out. We just walked out.

The Court You are saying now, and you are under oath, that you took no part **(page 19)** in that student disruption on February 26th? A. That's right, sir. I didn't have anything to do with it at all.

The Court: Did you ever receive a letter from the school authorities telling you why you were suspended? A. No, sir, I never got a letter saying why I was suspended; just that I was suspended, and that was it.

The Court: Did anyone tell you on February 26th to leave the premises of the school? How did you know you were suspended? A. The school was let out early that day.

The Court: Did you leave with all the other students? A. Yes, sir.

The Court: You weren't asked to leave before or anything like that; you were not singled out by any of the school administrators and told to leave; were you? A. No, sir.

The Court: You left with the rest of the students? A. Yes, sir.

The Court: You didn't go back to school the next day; did you? **(page 20)** A. No, sir.

The Court: Why not? A. The next day, well that happened on a Friday, the next day was Saturday, sir.

The Court: You didn't go back the next Monday; did you? A. No, sir.

The Court: Why didn't you go back? A. The Friday that I was suspended, I received a call.

The Court: Wait. Were you suspended — You left with all the other students on Friday; didn't you? A. Yes, sir.

The Court: Because the whole student body was let out about 10:30 in the morning? A. Yes, sir.

The Court: After you left the premises of the school, how did you find out that you were not to return to school the following Monday A. The principal called my house that Friday that I was suspended.

The Court: That Friday? A. Yes, and stated that I was suspended.

The Court: Did he tell **(page 21)** your mother or did he tell you? A. He told my mother I was suspended?

Q. You weren't there? A. I was there standing next — I answered the phone and he asked to speak to my mother.

The Court: He told your mother that you were suspended from school and you were not to return to school on the following Monday; is that correct? A. Yes, sir.

The Court: Did he give your mother any reason why you were suspended? A. No, sir.

The Court: Later on you received a letter either on the 5th or the 6th of March telling you to come to the Education Building on the 8th of March; is that correct? A. Yes, sir.

The Court: You didn't get into this meeting that you were suposed to have on the 8th of March; did you? A. No, sir.

The Court: Did you ever go back with your mother or anyone else on the 9th or the 10th or the 11th or 12th of March? Did you ever make an attempt to go back there? **(page 22)** A. We called for another appointment but they wouldn't speak to us, sir.

The Court: You found out nothing until the 25th of March; is that right? A. Yes, sir.

The Court: And on the 25th of March you got a letter saying that you were transferred to another school; is that correct? A. Yes, sir.

The Court: Does anyone have any further questions of this witness?

Mr. Bustin: May I ask another question, Your Honor?

The Court: Yes.

RECROSS-EXAMINATION

By Mr. Bustin:

Q. Mr. Lopez, have you ever seen a letter of February 26, 1971, directed to your parents? A. Yes, sir.

Q. Does that letter not say that there had been a disruption at school in which a group of students was involved, and does it not say that Dwight was in the group? A. I can't remember. I wasn't in the group.

Q. I will hand you what has been marked as Plaintiff **(page 23)** Exhibit 1 A. Have you ever seen that letter? A. I don't remember seeing it. My mother received it. It was written to her.

Q. Are you saying that your mother never went over that letter with you, or that you could have seen it and don't remember? A. I can't remember. I may have seen it. I don't know. I can't remember.

The Court: You may step down from the witness stand. Your testimony is finished now.

Do you want to ask another question?

Mr. Bustin: No, Your Honor.

The Court: Call your next witness, Mr. Murphy.

Mr. Roos: We would like to call Betty Crome to the witness stand.

BETTY CROME.

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Roos:

Q. Please state your name for the record. A. Betty Crome. **(page 24)**

Q. Miss Crome, on March 3, 1971, were you in the 7th grade at McGuffey Junior High School in the Columbus School System? A. Yes, I was.

Q. Were you suspended from McGuffey on March 3, 1971? A. Yes, I was.

Q. Could you describe, to the best of your ability, what occurred on that date which led up to your suspension? A. On that day I went to school and I went to my first period class. As I got out, there was students in the hall, and I couldn't get to my second period class. They were having disturbances in the hall, which I couldn't get to my class, so I decided I would go home because there were other disturbances, or there had been, and I guess I was scared at what might happen, so I would go home.

So, I went outside and students began to come out of the door too, so, which I heard my friend call me and we started talking on the playground, and then the principal came out and he told us to go home. He told all of us to go home which were on the playground.

Q. Then you left the school at the request of the principal; is that correct? A. Yes, I did.

Q. Then could you describe what occurred between the time you left school and the time you attempted to get home? **(page 25)** A. Well, let's see. I was on my way home, which other students were going the same way that I was. They were going over to Linden McKinley, I guess, they said they were going over there to see if they could get some help, so they was gonna go see what they could do to McGuffey, I guess.

Q. Were you with those students? A. I was alone then and they were behind me, so when they got over to Linden, I was still on the premises of Linden McKinley, so I guess the principal had called the police, and the police came and started to pick us students up, and I got picked up too.

Q. Were you taken to the Police Department? A. Yes, I was.

Q. What occurred at the Police Department? A. They asked me a few questions and then they called my mother and told her to come and pick me up.

Q. Did the police at that time venture the opinion that you were suspended; that you would be suspended? A. Yes, they did.

Q. From there did you go home? A. Yes, I did.

Q. Let me get this clear. When you were — Were you among the demonstrators at Linden McKinley? A. Were I among them?

Q. Yes. Were you demonstrating? **(page 26)** A. No, I wasn't.

Q. Were you yourself trying to seek any sort of assistance? A. No, I wasn't.

Q. You were in the area? A. Yes.

Q. When did you then find out that you had been suspended? A. When I was down town, they told me that

I probably would be suspended, so when we got home, my mother called the school to see if I was, and they said, the secretary said I probably was suspended.

Q. At that time were you given any reasons for the suspension? A. No, I wasn't.

Q. Did you at any time prior to the suspension, or prior to the next school day, have an opportunity to tell your side of the story? A. No, I didn't.

Q. Were you given any sort of a hearing? A. No, I wasn't.

Q. Did you subsequently receive a letter or other correspondence concerning your suspension? A. Yes, I was.

Q. That letter was dated March 3rd, 1971? A. Yes, it was.

Q. That's Exhibit 2 A, Your Honor. **(page 27)**

Q. Did you receive any other letter or correspondence other than that one? A. No, I didn't.

Q. Well, during any time that you were out of school, or at any time thereafter, were you ever given an opportunity to tell your side of the story? A. No, no, I didn't.

Q. Were you ever given an opportunity for a hearing? A. No, I wasn't.

Q. On March 3, had you done any other activity which you possibly could have been suspended for, to your knowledge? A. No, I didn't.

Mr. Roos: Nothing further of this witness, Your Honor.

The Court: You may cross-examine, Mr. Bustin.

CROSS-EXAMINATION

By Mr. Bustin:

Q. Miss Crome, what grade were you in at the time the suspension took place? A. Seventh grade.

Q. What grade did you go into last year? A. Ninth grade.

Q. You are in the ninth grade right now? **(page 28)** A. No, tenth.

Q. I would like to go over this again. This suspension occurred on or about March 3, 1971? A. Yes, it did.

Q. What was taking place at McGuffey? A. What was taking place?

Q. Yes. What was going on there at the school at that time? A. You mean what were they doing?

Q. Right. A. They were breaking the light bulbs and throwing glasses out the cafeteria, and that's all I can remember.

Q. I believe your testimony was you left the school. A. Yes, I did.

Q. When did you leave? What time of day? A. I can't remember.

The Court: Was it in the morning or in the afternoon? A. In the morning.

The Court: About how long, what time did you get to school that morning? A. 8:45.

The Court: How long were you there before you left, about; were you there an hour? A. Forty-five minutes. **(page 29)**

Q. Did you leave on your own volition? A. Yes, I did.

Q. Where did you go? A. After I left the school, I reached the playground.

The Court: Is that the playground connected with the school? A. Yes, it is.

Q. What happened there? A. The principal came out and told everyone to go home.

Q. Told you to go home? A. Yes.

Q. Did he at that time say to you, you are suspended? A. No, he didn't.

Q. Were other students going home at that time too? A. No, they were going to Linden McKinley.

Q. Did you go to Linden McKinley? A. I have to go that way to get home.

Q. Did you stop there? A. No—Yes, I did.

Q. What was happening at Linden McKinley? A. They were on the sidewalks, people were looking out McKinley's windows and the students were looking up and hollering at the students that were looking out the windows.

Q. I believe your testimony is that you were picked up by the police there at Linden McKinley? **(page 30)** A. Yes, I was.

Q. You were taken down town? A. Yes, I was.

Q. Where did you go, to the Juvenile Bureau? A. Yes, I did.

Q. Did somebody in the Juvenile Bureau interview you at that time? A. Yes.

Q. Then did the police call your parents? A. Yes, they did.

Q. Did your parents come down to the Police Department and get you? A. My mother did.

Q. Did the police discuss this whole situation with your mother at the time? A. Yes, he did.

Q. Then what did they do, send you home with your mother? A. Yes.

Q. Mss Crome, have you seen the letter which your counsel referred to as Exhibit 2 A, a letter that was sent to your parents? A. Yes, I saw it.

Q. What day did you go back to McGuffey? A. I can't remember.

Q. Would it have been around March 8th? **(page 31)** A. Yes, I think.

Q. How long were you out of school? A. A week.

Q. Did your parents, when you went back to McGuffey, go with you or your parent? A. No, she didn't.

Q. Doesn't a letter marked Exhibit 2 A talk about the parent accompanying you back to school on March 8, 1971? You say your parent did not? A. No, she didn't.

Q. Did your parents ever come down and talk to the principal? A. No, she didn't, but she talked to him on the telephone, the secretary.

Q. Did she ever talk to the principal on or about March 8, 1971? A. No, she didn't.

Q. You say you were in the seventh grade at the time? A. Yes, I was.

Q. You are presently in the tenth grade? A. Yes, I am.

Mr. Bustin: No further questions.

(page 32)

REDIRECT EXAMINATION

By Mr. Roos:

Q. Betty, did you leave the school grounds at any time before the principal told everyone to go home? A. No, I didn't.

Q. So, you left the school building to go out into the playground? A. Yes, I did.

Q. Why did you do that? A. Because I thought I would go home.

Q. But you were in the playground when the principal came out and told you to leave? A. Yes, I was.

Q. He told everyone to leave? A. Yes, he did.

Q. To your knowledge, was there any opportunity for any sort of hearing between the 3rd when you were suspended and the 8th when you returned back to school? A. No, there wasn't.

Q. During that time were you given any opportunity to make up the work that you had missed? A. I don't understand.

Q. Did you have an opportunity to make up that time? A. No, I didn't.

The Court: Betty, you **(page 33)** did pass through the seventh grade; didn't you? A. Yes, I did.

The Court: You passed all your subjects in the seventh grade? A. Except for geography.

The Court: Did you make that up? A. No, I didn't.

By Mr. Roos:

Q. No charges were brought against you by the police when you were down at the Police Department? A. No, they weren't.

Mr. Roos: No further questions of this witness, Your Honor.

The Court: How did you know when to go back to school? A. On the letter it said what day I was supposed to bring my parent in, and she called in that day and said that she couldn't make it, and they told her that it would be all right; she could send me back.

The Court: So, your mother, you didn't talk to the school people over the telephone; did you? A. No, I didn't.

The Court: They talked **(page 34)** to your mother and your mother told you to go back to school on the 8th and it would be all right; is that it? A. Yes.

The Court: You may leave the witness stand.

Call your next witness, Mr. Murphy.

SUSAN COOPER.

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Roos:

Q. Please state your name for the record. A. Susan Cooper.

Q. On Monday, March 15th, 1971, were you attending Marion Franklin High School in the Columbus School System? A. Yes, I was.

Q. On Monday, March 15, 1971, were you suspended from Marion Franklin? A. Yes, I was.

Q. How did you find out that you were suspended from school? A. Well, the principal told me I was suspended, and I was escorted out of the school by plainclothesmen.

Q. Did the principal at that time tell you why you were **(page 35)** suspended? A. No. Can I explain what happened?

The Court: Yes. You go ahead and explain what happened because this Court is in complete darkness as to why you were escorted out, and I think you ought to bring that out in your questioning, Mr. Roos. A. It was on Monday when I was suspended. The previous Thursday the school was closed down. There had been some trouble in the school and the school was closed down.

We was asked to report back to school Monday, the whole student body. When I got back, there was supposed to be assembly in the auditorium with the parents and the students, we were told that we could meet in there Monday, because we was having assembly Thursday when they closed it.

So, when we come back, we wasn't allowed to have the assembly, so they were asking all the students to go back to class and everything, and there was a lot of parents there, and it was causing a lot of confusion because they said we could have this assembly.

Tension was rising and all kinds of things like that, and I had wanted to go home. My mother had told me if anything went wrong, for me to come home. So, in the mean time I was trying to get excused to go home, and Mr. Collmar, which was the vice principal at the time, I think he told a whole lot of people to go to class. There was a whole lot of people in the attendance office getting **(page 36)** excused, and I was trying to get excused and trying to explain to him that I wanted to get excused; I

didn't want to leave the building without getting excused. I wanted to get a written legal excuse, and I told him he could call my mother so I would be excused legally and not be illegally suspended, and he just told me, he said, "Well, you are suspended anyway," you know.

The Court: Susan, what happened on the previous Thursday there at your school? A. I think it was all evolved around the Black History Week, and I think—I can't quite remember. There was a disturbance in the assembly about the way the program was being run, or something, and somehow the black students ended up in the gym and the white students were in the auditorium. We were separated.

The Court: Did the teachers and the principal separate you? A. No, I think the student body did it theirself.

The Court: The white students just voluntarily went to the auditorium and the black students just voluntarily went to the gym? A. Right, because there wasn't a fight or anything like that, and what happened, like one of the blacks went over to the white side and the whites came over then to the black side, and we talked about it. There really wasn't a problem between us **(page 37)** and so we all got together in the auditorium finally and some parents had come to the school because they knew there probably would be some trouble because Black History had caused trouble before, and we was having assembly and everything, and everything was going real good.

Mr. Fulton came in, which was the principal, and said the school was gonna be closed; we could continue the assembly Monday. That's the Monday I come back to school, and since there wasn't assembly—

The Court: You were out of school on Friday too, weren't you? A. Right. Everybody was, and so when everybody comes back to school, we was under the im-

pression we could have this assembly. It was more like a grievance-like, you know, we was gonna get everything off our chests, and we was just gonna talk about it, and we wasn't allowed to have it, and a lot of people got real upset, and could see that people was—I mean, just no telling what people was gonna do, and I didn't want to get involved.

The Court: Were there many parents with the children there on Monday morning? A. Yes, because they came up Thursday to see what was going on. It wasn't a whole lot of trouble, and everybody just wanted to talk about it, so the parents came back on Monday with the same impression; that we was gonna have this **(page 38)** assembly, but we wasn't allowed to have it, so what I did: My mother had told me to come home if everything didn't go right. I was trying to get excused to go home legally, and I was suspended just like that.

The Court: What year were you in then, Susan? A. That was '71, 11th.

The Court: That's the equivalent of being a junior? A. Right.

The Court: Go ahead, Mr. Roos.

Q. Could you explain who suspended you and what the details of the actual suspension were? A. Mr. Collmar suspended me in the hall. I was standing by the attendance office and he told me, he says, "Susie," he said, "You are gonna have to go home."

The Court: He call you Susie?" A. Yes, he did. He says, "Susie, you are gonna have to go to class."

I said, "Well, Mr. Collmar, my mother told me to come home if everything started, my mother said to come home." I said, "You can call my mother. She will tell you that I can come home. I just need a written excuse. I don't want to be **(page 39)** involved in this."

I said, "I just want to go home. I don't want to get suspended."

He said, "You are suspended any way," and two plainclothesmen escorted me out the door.

Q. Then what happened? A. Half way home I met my mother. She was coming up to the school because she felt something was gonna go wrong. Me and my mother came back up to the school.

The Court: Were you still with the plainclothesman when you met your mother? A. No.

The Court: They just escorted you off the school property? A. Yes. See, I live right down the street from the school, and I was walking home and I met my mother half way. I told her I had been suspended, so we went back up to there to talk to Mr. Collmar because he suspended, so we went back up to there to talk to Mr. Collmar because he suspended me. Mr. Fulton said he had us sit in the office because he said he would come back, and we waited. He didn't come back, so I approached the principal of the school, Mr. Fulton, and asked him about it since he was the head authority, I figured he was the one that ordered the **(page 40)** suspension.

He said he didn't know anything about it; for me to have another seat, so I went back out and set again. Mr. Gill, who is the last—like there is Mr. Fulton and Mr. Collmar, like Mr. Gill, he is at the bottom of all of it, and he is the one that told me I was suspended.

The Court: Who told you you were susupended? A. Mr. Gill.

The Court: You were there with your mother then? A. Right. Mr. Gill is the one that told me that I was suspended, but Mr. Collmar is the one that had suspended me in the very beginning, so I was trying to talk to Mr. Collmar. Mr. Collmar never showed back up to

talk to me. Mr. Gill delivered the message I was suspended, yet Mr. Collmar is the one that told me. Mr. Fulton didn't know anything about it, but Mr. Gill ordered it and told me I was to go home for ten days, and when I came back, I could have a conference.

The Court: Mr. Gill told you when you were there with your mother that you could go home for ten days? A. For ten days, and I could talk about it when I came back.

The Court: Then what **(page 41)** did you do, Susan? A. I went home.

Q. With your mother? A. Yes.

Q. At the time that you were in the principal's office, or the office at Marion Franklin trying to talk to these various people, were you ever given any opportunity to present your side of the story? A. No, I wasn't. I was merely trying to find out why, but in the process of trying to find this out, I had to go through three different people who didn't know anything about it, and the last one, Mr. Gill, "You are suspended. Go home for ten days. You can talk about it when you come back."

That's just how it was.

Q. Mr. Gill gave no reasons? A. No.

Q. Did you receive any correspondence from the school authorities during the ten days that you were out of school? A. We received a letter.

Q. That would be Exhibit 4 A, Your Honor. Did you receive any other letters? A. No, I didn't.

Q. Did you have any other opportunity, either during the ten days or afterwards, to protest your innocence? A. No, I didn't. **(page 42)**

Q. Did you have any opportunity to present witnesses or did you have a hearing of any sort? A. No.

Q. Did you miss work, school work, during the time that you were out of school? A. Yes, I did. I tried to get my materials; I wasn't allowed to do that. I finally had

a friend bring me some books and stuff. I gave her my locker combination and she brought me my books, but that wasn't good enough. I mean, I could read the books and everything, but I didn't know what materials I was supposed to be covering in the books because I wasn't, you know, in the classroom those ten days.

Q. Were you given any opportunity to make up the work that you missed? A. No. When you are suspended, you are not allowed to make up any work.

Mr. Roos: Nothing further of this witness, Your Honor.

The Court: You may cross-examine, Mr. Bustin.

CROSS EXAMINATION

By Mr. Bustin:

Q. Miss Cooper, have you graduated from school? A. Yes. **(page 43)**

Q. When did you graduate? A. June the 10th, 1972.

Q. At the time this suspension took place, you were in the 11th grade? A. Eleventh, yes.

Q. I take it you passed through the 11th grade and into the 12th grade? A. Right.

Q. You completed the 12th grade and graduated, you said, on June 10th? A. Yes.

Q. On the day that this suspension took place, did you not have a meeting with Mr. Fulton, the principal, in the hall? A. I never talked to Mr. Fulton that day at all, except when I went back to the hall office. My whole confrontation was Mr. Collmar.

Q. What was going on in the hall at the time Mr. Collmar came up to you or met with you? A. People coming out of the assembly; people trying to get in while other people was coming out, because we wasn't allowed to have it. It was really just a big mess of people

trying to see where they was going. The halls was just cluttered with people.

Q. What time of the day was this? A. It had to be around 10:30 or 11:00 o'clock, somewhere **(page 44)** in there. It was still in the morning.

Q. What was your assignment at that particular time of the morning? A. What do you mean?

Q. Where were you supposed to be in that period of school? A. I can't remember back that far. Normally on a normal school day, I would have been in my class, whatever that was.

Q. But you were not in class at that particular time? A. No, I wasn't.

Q. Were you requested to go to class? A. Yes, I was.

Q. Did you go? A. No, I didn't.

Q. Did Mr. Gill take you to his office on that day? A. Oh, no one took me to any offices. I came back up to the school and went to Mr. Fulton's office.

Q. What time of day was that? A. By then it must have been around 11:30 or noon, because I had met my mother coming back, going home, and we had come back up to the school, and we had sitted and waited to talk to Mr. Collmar.

Q. You met your mother? A. Yes.

Q. Mr. Gill, to the best of your knowledge, had not called your mother? **(page 45)** A. He couldn't have because my mother was on the way up there.

Q. Following this suspension, you returned to Marion-Franklin; is that right? A. Yes, I did, to find out why I had been suspended.

Q. Did you return with your parents? A. With my mother.

Q. Who did you meet with at that time? A. When I came back in the building, Mr. Kollmer was still out

in the hall with all these other people. I told Mr. Kollmer me and my mother wanted to speak to him. He had us just sit in the office, waiting for Mr. Kollmer. He didn't show back in there, so I went to Mr. Fulton because he is the head principal, he should know something about it. He doesn't know anything about it. That's what he told me, "Have a seat, wait on Mr. Kollmer again, so I am sitting out there waiting, Mr. Kollmer still hasn't showed up. From somewhere Mr. Gill comes out and he is the one that delivers the message, "You are suspended. You can have a conference in ten days when you come back."

I still never found out why, because the only reason I feel that they could have suspended me at all is that they felt I was being disobedient. I think that's what they put in the letter; I was being disobedient, I guess, to the fact that I didn't go to class, but I still don't feel I was being **(page 46)** disobedient because, you know, like I was really caught up in a psychological thing, this is how I feel, because.—

The Court: What do you mean you were caught up in a psychological thing? A. Because—okay, now—the principal saying no class. Okay. Like you can't leave the school grounds without permission, or you are automatically suspended.

I was trying the best and only way I know how to do this right and get this excuse so I can leave and return to school without a suspension.

Then, on the other hand, it seems—maybe I am wrong, this is how I feel this is what motivated me at the time—now it seems like the system we are under is, you know, motivated under Christianity—

The Court: I am not interested in that. Susan, before Mr. Collmar told you you were suspended, did he tell

you to go to the classroom where you were supposed to be? A. Yes, sir.

The Court: What did you say to him? A. I told him that my mother had told me to come home. This is what I am talking about. My mother told me if anything went wrong, to come home.

The Court: What was **(page 47)** going wrong that you thought you should go home? A. Because he was telling everybody to go to class—

The Court: If you had gone to class, would you have been in any danger? A. I am not sure because there was tension up there because—I don't know what day it was.—

The Court: You did refuse Collmar when he told you to go to your classroom; didn't you? A. I didn't actually refuse. I asked Mr. Collmar would he please call my mother so I could get out of there before something went wrong.

Q. Miss Cooper, following your return to Marion Franklin, were you elected as the homecoming queen? A. Yes, I was.

Q. What year was that? A. '72.

Q. In other words, that's the year following this suspension? A. Yes.

Q. Miss Cooper, when you returned to school following the suspension itself, did you return with a parent? A. Yes, my mother.

Q. Did you talk to the principal or one of the assistant **(page 48)** principals at that time? A. I believe I talked to Mr. Fulton. I can't quite remember who I talked to.

Q. Was your mother present? A. Yes.

Q. Was the subject of the suspension discussed at that time? A. Yes. The only thing that they ever told me I was suspended for, I think is because I was belligerent to whatever happened. I still don't know what happened.

Q. Was the subject of the suspension discussed during that conference? A. Not in any detail; just that I was suspended.

Q. I am talking about the conference when you came back. A. Back to school?

Q. After the suspension. A. No.

Q. Did you make any attempt to go to your class on the day you were suspended?

The Court: The record is perfectly clear on that, Mr. Bustin. She didn't.

Mr. Bustin: I have no further questions, Your Honor.
The Court: Do you have any questions on redirect examination? **(page 49)**

REDIRECT EXAMINATION

By Mr. Roos:

Q. Susan, to the best of your knowledge, did you receive zeros in all work that you missed during the time that you were out of school? A. Yes, I did.

Mr. Roos: Nothing further, Your Honor.

The Court: Susan, you did pass all your subjects; didn't you, in your third year? A. I passed them because I was intelligent enough to do so.

The Court: I am not asking you that. I said did you or did you not pass all your subjects. A. Yes, I passed.

The Court: Leave the witness stand and take your seat out in the courtroom.

Call your next witness.

DEBRA FOX,

called as a witness on behalf of the plaintiffs, having been first duly sworn as follows: **(page 50)**

DIRECT EXAMINATION

By Mr. Roos:

Q. Please state your name. A. Miss Debra Fox.

Q. Were you attending Marion Franklin High School in the Columbus School System on Wednesday, March 10, 1971? A. Yes, I was.

Q. Were you suspended from Marion Franklin on Wednesday, March 10, 1971? A. Yes, I was.

Q. Who suspended you? A. Mr. Collmar.

Q. At the time that you were suspended by Mr. Collmar, did he give you any reasons for the suspension? A. No, he didn't.

The Court: Debra, tell us in your own words, as best you recollect, on March the 10th, 1971, Mr. Collmar suspended you? A. Yes.

The Court: Where were you when he suspended you in the school? A. When he suspended me, I was in his office, but when he told me I was to be suspended, I was in the lunchroom.

The Court: What time of the day was it? **(page 51)** A. Lunch time, 12:00 o'clock.

By Court:

Q. What was taking place there in the lunchroom? A. I was eating my lunch.

Q. Well, was there any disruption or anything? Did Mr. Collmar walk right up out of the blue and say, you are going to be suspended; come to my office? A. No, he said, "Debra, I would like to see you in my office."

I said, "What for?"

He said, "If you don't come to my office, go home for ten days."

Q. He said, if you don't come to my office— A. Go home for ten days.

Q. Did you go to his office? A. Yes, sir, after I called my mother.

Q. When you went to his office, what did he say? A. He told me I was suspended for ten days.

Q. Did he give you reason why you were suspended? A. No, not really.

Q. What did he say to you? A. He said that I was suspended for ten days, to go home with my mother and I would receive a letter.

Q. At that time did he tell you why you should go home and you were suspended for ten days? **(page 51)** A. Well, he talked to my mother.

Q. Did he, before your mother got there, tell you? A. No, he didn't.

Q. He didn't give you any reason whatsoever? A. No, he didn't.

Q. Did you have any idea of why you were being suspended? A. No, I didn't.

Q. This came as a complete surprise? A. Yes. There was disruptions that morning in the school, but it came as a complete surprise to me that he suspended me.

Q. Did you take part in the disruptions? A. No.

Q. You were in the classroom all the time? A. No, there were no classrooms.

Q. Weren't classes being conducted? A. No, I was in my club. We was having club meetings that morning when they came and told me to come out. They told me to come to the attendance room, and they asked me what were the students planning on doing today.

The Court: Go ahead, Mr. Roos.

By Mr. Roos:

Q. Had you done anything that morning, to your knowledge, that violated any rule or regulation of the school? A. No, I didn't. **(page 52)**

Q. Had you been involved in the demonstrations? A. I was out in the halls with the other students but I wasn't doing anything.

Q. Were there a lot of other students out there? A. Yes, the whole school.

Q. Considering the fact that there were a lot of students out there, could Mr. Collmar or someone else have made a mistake as to your identity with respect to your involvement in any demonstrations?

Mr. Bustin: I object. That calls for speculation.

The Court: I will sustain that objection.

Q. Were there a lot of other students out there? A. Yes, there was.

Q. At the time that he called you into his office, Mr. Collmar, did he give you any opportunity to tell your side of the story? A. No.

The Court: What would prompt such a question from you, Mr. Roos, when this witness has told this Court in the plainest possible terms that she was given no reason for the suspension.

Q. Well, I guess what I was trying to get at, Your Honor, was maybe I should have phrased the question: Were you **(page 53)** given any opportunity to protest your innocence of any wrong doing? A. No, I wasn't.

Q. At the time that Mr. Collmar suspended you, did he appear to be emotionally upset? A. Yes, he was.

Q. Did you then leave Mr. Collmar's office and go home? A. Yes, I did.

Q. At the time that you had the meeting with Mr. Collmar, did he tell you how long the suspension would last? A. Well, he stated that when he was in the lunchroom, ten days.

Q. You received, subsequent to the suspension, a letter dated March 10, 1971; did you not? A. Yes, I did.

Q. You received one dated March 19, 1971? A. Yes, I did.

Q. And one dated March 23, 1971? A. Yes, did.

Q. Those are Exhibits 3 A, 3 B and 3 C, Your Honor. Did you receive any other correspondence from the school? A. No, I didn't.

Q. Between the 10th of March and the 19th of March, were you given any opportunity to met with school officials to **(page 54)** protest your innocence? A. No, I didn't.

Q. Did you return to school on the 19th? A. Yes, I did, with my father.

Q. What occurred at that time? A. We went to Mr. Collmar's office and he told my father to take me back home; that I was suspended for ten more days.

Q. Did he at that time indicate that he had some other plans for you? A. Yes, he did.

Q. On the 19th did you do any act, to your knowledge, that would have prompted a further suspension? A. No, I didn't.

Q. You were there with your father? A. Yes, I was.

Q. Were you given any new reasons for your suspension? A. No, just that he did mention something about being transferred to another school. I think he did.

Q. At the meeting on the 19th were you given any opportunity to protest your innocence to the original act that you had supposedly done? A. No.

Q. Were you transferred ultimately to South High School? Yes, I was.

Q. When were you finally admitted to South? **(page 55)** A. The last couple of days in March.

Q. Had you requested the transfer to South? A. No, I didn't.

Q. Were you given any notice of reasons other than the letters that you received that are already in evidence, any other notice of reason for the transfer to South? A. No.

Q. Did you have any difficulties as a result of your suspension and transfer? A. Yes, I did.

Q. Could you explain? A. I had hard time making up my grades and the work that I missed.

By The Court:

Q. What year were you then in, Debra? A. Tenth.

Q. That would be the second year of high school? A. Yes.

Q. What grade are you in now? A. I graduated.

Q. From South High School? A. No, from Central Night School.

Q. How old were on March 10, 1971? How old are you now? A. Eighteen; I was 16. **(page 56)**

Q. How long did you go to South after you were transferred there? A. The rest of the year.

Q. Then beginning in September of 1971, did you go to Central Night School? A. No, I went to East High School.

Q. East High School? A. I had moved from the district so I attended another school.

Q. When you were at East High School, starting in September of 1971, were you in what is known as the junior year or the 11th grade? A. I was in my junior year. I had completed most of my junior year.

Q. Let's get this straight. You were in your sophomore year or the 10th grade when you were suspended in March 1971; is that correct. A. That's right.

Q. Later that month, toward the end of the month, you were transferred down to South High School? A. That's correct.

Q. You completed your tenth grade or your sophomore year at South High School; is that correct? A. That's right.

Q. Then the following September, which would be September **(page 57)** of '71, you were enrolled at East High School? A. Right.

Q. Were you enrolled as an 11th grader or the junior year at that time? A. I was enrolled as a junior. I had started when I was in the eighth grade, I was in a program they considered as an honor student; students, you know, make A's and B's, and we started taking our ninth grade subjects in the eighth grade.

Q. Then did you make high school in three years? A. Yes. I finished in two and a half years.

Q. Then did this suspension and the transfer effect — A. Yes, it did. When I was over at Marion Franklin, I was taking French III and I was making —

Q. Do you go to school now? A. No, I don't. I graduated.

Q. Do you work? A. No, I don't. I have a little girl.

Q. You are married. A. No.

Q. You made high school in two and a half years? A. Yes, I did.

Q. Even with this suspension? A. Yes, I did, but I still had some problems because I was making straight A's but when I was transferred to South, my grades went down. **(page 58)**

Q. Where did they go to? A. They went down to, in French I started making F's and D's.

Q. What happened to you when you went to East High School? How did you do out there? A. At East? Oh, bad.

The Court: Go ahead, Mr. Roos.

Q. During the time, were you given an opportunity to make up the work that you had missed during the 20 days that you were out of school? A. No, I wasn't.

Q. To your knowledge, did you get zeros on the work that you missed? A. Yes, I did.

Q. Was part of the decline in your ability or—strike that. You had difficulty adjusting to the new teachers and new ways of doing things? A. Yes, I did.

Mr. Bustin: Objection, Your Honor.

The Court: I will sustain that objection. Let's go. This young lady made high school in two and a half years. This Court is not going to be impressed by any loss of ten or 20 days suspension. **(page 59)**

Mr. Roos: Your Honor, I have no further questions of this witness.

Mr. Bustin: Defendants do not desire any cross-examination of this witness, Your Honor.

The Court: Call your next witness, Mr. Roos.

Mr. Roos: I would call Dr. Robert Woody, Your Honor.

DR. ROBERT WOODY,

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Roos:

Q. Dr. Woody, what do you presently—What's your present location of employment? A. I am presently Professor of Education and Psychology at Ohio University and serve as consulting psychologist to the Eastland Psychological Center in Columbus; the Psychobehavioral Institute in Grand Rapids, Michigan, and am designated to become head of the Center for Education Law at Ohio University.

Q. In your work as a school psychologist and a child psychologist, have you had the opportunity to observe children who have been suspended from school? **(page 60)** A. Yes.

Q. Could you estimate roughly the number of children that you have seen during this time as a psychologist? A. I know for a fact that I have personally done psychological evaluations on approximately 3,000 school age children and have seen, I cannot estimate how many more, but it's literally in the hundreds and perhaps even in the thousands beyond that, in the last 13 years.

Q. Not all of those children were suspended? A. Not all of those were suspended.

By The Court:

Q. What part of them, doctor? A. I would be very hard to estimate, sir.

Q. Would it be ten percent or 20 percent? A. No, a much smaller percentage.

Q. Five percent? A. Smaller.

Q. Well then, in round numbers, that you have seen 100 children who were suspended? A. I have seen in one project alone to be identified as the Living Arts Project in Grand Rapids, Mchigan, set up specifically for children, youth who have been suspended or who have had run-ins with the law, but perhaps not found guilty of crime, but felt an alternative education program was needed, over a two and a half-year period, I personally dealt **(page 61)** with approximately 300. In public school systems, I have dealt approximately with 50 who were your 8, 10, 12 year olds who have been suspended for violation of school regulations.

The Court: Thank you.

By Mr. Roos:

Q. In your practice that you previously described and which is outlined in your vita, have you observed psychological harms befalling students who were suspended? A. Most definitely.

Q. Could you describe some of the behaviors that you have observed.

Mr. Bustin: Objection. . .

The Court: I am going to let this go in for whatever value we place upon it. I would like to state I want you to get on with your examination, Mr. Roos. . . A. Would you restate your question, please, sir.

Q. You have previously said you have observed psychological harms befalling students who have been suspended? A. Correct.

Q. Could you describe some of the behavior that you have observed that appeared to spring from the suspension? A. I think to preface these comments we would have to say that the majority of the "Harms" fall within the rubric of social deviancy labeling. In other words, the person is **(page 62)** placed into a category other than the "normal."

Now, specifically what I have run into—Well, I will come back to that—I have found a number of cases where the person may have had a flawless record academically on or behaviorally prior to the suspension, and I can think of specific instances, specific young persons, who once they have been labeled as a social deviant by fact of expulsion or suspension, including short-term suspension, they have returned after a period of a few days even and have taken on a new role in rebellion.

Secondly, another psychological reaction that I have noted in a number of cases is that there are a number of young people who have no way of finding rewards from contracts with other youngsters, and the minute they become labled as exceptional or deviant in this case, they start using negative behavior as a way of receiving what is called social recognition from their peer group, and so instead of the suspension serving a constructive purpose to re-enforce better behavior when they return to school, I have seen a number of instances where exactly the opposite has happened. It has re-enforced continued acting out of negative behavior.

Perhaps finally, I might add to this, circumstantial, I am sure, the last witness that was on here. I am sure the last witness that was on the stand, I would wonder about the relation to the fall in grades, but that is strictly **(page 63)** speculation as to whether this could be caused by the rest.

Finally, the labeling process or the social deviancy labeling does carry over from one teacher to another, whether it is from a cumulative record, that is on file, or from word of mouth over coffee cups in the teacher's lounge and stereotypic responses to that student, do in fact occur in later years, and I have witnessed that.

Q. What is the effect of stereotyping with respect to the student's performance? A. Again, I can think of specific cases, and just in summary, it would be that the teacher expects a certain kind of behavior, namely rebellious behavior or negative behavior, from a youngster and with that kind of expectation as a pre-set the youngster naturally is re-enforced into producing that kind of behavior.

Q. Are there studies that support that? A. I think we could come up with a number of studies that support that, yes, of pre-sets.

Q. To clarify what you said with respect to the social deviancy labeling, are you saying that when a child is suspended, he gets recognition, that this recognition may tend to make him do bad things in the future to get more and more recognition; is that, in a layman's definition, correct? A. In a layman's terms, that's it, and behavioral science terminology there are literally thousands of studies at this **(page 64)** point on the effects of social deviancy labeling. In other words, the moment a person is identified as differing from the majority of the others, that person uses that labeling as a motivator for subsequent behavior. In the case of suspension, it would be along the three points I outlined previously in terms of probably the effects.

I might add that I think the social deviancy in terms of effect probably runs on a continuum, and of course the more powerful the label, such as ex-convict versus

suspended for three days, the more powerful the effect potential effect, and thus the more powerful the need for some kind of rehabilitative effort to counteract that kind of deviancy label.

The Court: Doctor, may I conclude from what you said so far that every student, we will say in a high school, who is suspended from class from a period of, let's say, three days to ten days or such period, therefore automatically becomes a social deviant? A. You may conclude that he does in fact for that period become a social deviant, but we cannot conclude that he will automatically or that everyone will automatically regress to more negative behavior in the future because people—

Q. He is a social deviant in the eyes of his fellow students; is that correct? A. That's correct.

Q. Is that during the period of suspension only, or does **(page 65)** that carry over? A. That depends upon the personality structure of the individual. It depends upon his previous relationships with his peers, and it depends upon the kinds of supports or lack of supports that come from his home environment and surrounding cultural milieu.

Q. Doctor, may I also conclude from what you have testified to so far that in all cases of suspension some harm comes to the individual? A. I would go so far as to say in all cases of suspension, the potential for harm is there, psychological harm.

Q. Doctor, we know that there is a potential for everything, but may I conclude from what you have said that in all cases of suspension, let's say suspension of at least three days up to, say, two weeks, that there is harm to the student of one kind or another, whether you call it social deviancy or he falls behind in his stud-

ies or something like that; is there harm to the student? A. I would say yes.

Q. That being the case, doctor, since harm of some kind comes to every student, who is subjected to a suspension, does that mean that the school systems should not suspend students; that there should be some other means of keeping them under control? A. I would be willing to go on record that, yes, suspension **(page 66)** is a negative alternative; that there should be positive alternatives to do away with suspension.

Q. Can you recommend any positive alternatives, doctor? A. Yes, and we could go on for days with that.

Q. All right. Let's talk just about the alternative of special attention from a school—I guess they are called Pupil Personnel workers within the City School System —where the person receives attention from school social workers. I guess they are called visiting teachers in Ohio, a school psychologist where there is some kind of therapeutic intervention dealing with what the alleged problem was, such as being belligerent.

Instead of suspending them from school, where they are released into an unstructured environment, and I have witnessed cases where the suspension—

Q. They are released to their homes, and presumably that's not an unstructured environment; is it? A. Unfortunately many youth—

Q. The fact is that it is an unstructured environment? A. That, sir, is correct.

Q. Doctor, would your answer be the same as to the alternative means to suspend regardless of the behavior of the individual and the aggravation of his offense? A. No. If there is some kind of assault on the other **(page 67)** person, some kind of physical danger to the other person, obviously the school has to do something.

Q. By the other person, you mean? A. A second party.

Q. You mean the teachers or the administrators? A. Or another student. There has to be the safeguarding of the other persons, and so there is a point where, yes, suspension has to occur, but your original question, Your Honor, I believe was: Is suspension going to cause harm to potentially to everyone, and I would say yes to that.

Q. I didn't say potentially. I said will it cause harm. A. Yes, even the one who assaulted another one, suspension is going to be a negative factor.

The Court: Go ahead, Mr. Roos.

By Mr. Roos:

Q. With respect to a person who perceives themself as innocent, would the same harms be increased or decreased, or would there be additional harms that may be likely or possible to happen? A. I think that psychological theory would unequivocally support that the innocent persons who is suspended unjustly that the probability would be greater that the harm would occur.

Q. In addition to your psychological experience, have you ever been involved in a college selection process? **(page 68)** A. Yes. I served as—excuse me.

The Court: Just a minute, please. Is this going to lead to, or will the next question be this: Is suspension harmful to being selected in college?

Mr. Roos: That's correct.

The Court: I am not going to listen to that, Mr. Roos, not based on this record, so just skip over that and go on to your next question.

Mr. Roos: Your, Honor, if I might address the Court on that.

The Court: No, you may not. Continue with your examination.

Mr. Roos: I have no further questions of this witness.

CROSS-EXAMINATION

By Mr. Bustin:

Q. Mr. Woody, have you had occasion to conduct a psychological evaluation of the students involved in this litigation? A. No, I have not.

Q. Have you studied their school records or any of the information possessed by the administrative officials? A. No, I have not, but would be willing to do so. **(page 69)**

Q. Did you visit any of the schools where these suspensions took place? A. No, I have not. I am familiar, being a resident of this area and having worked in and out of Columbus since 1967, with the overall educational atmosphere only of the school system here.

Q. Mr. Woody, in talking about the effects of suspension, isn't it just as probable that the effects you talk about could be caused by the behavioral characteristics of the student as the suspension itself? A. Would you paraphrase that a bit further, please?

Q. I believe you talked in a very general way about harms that come to— A. The act of suspension itself?

Q. Right. I believe somewhere in your testimony you also said you would have to know something about the overall behavioral characteristics of the particular students involved; right? A. Right.

A. What I am asking you as a layman—

The Court: No, you don't ask questions. Counsel ask questions. If you don't understand the question that was just put to you, although I understand the question, put the question to the witness again. **(page 70)**

By Mr. Bustin:

Q. What I am trying to get at you as an expert is: Wouldn't the behavioral characteristics of the particular student involved have as much potential in talking about the harm, the harm you are looking for, as the suspen-

sion itself? A. I don't believe so, and if I could insert a very brief anecdote. I remember very clearly a young approximately ninth-tenth grade boy I worked with about a decade ago who was from a white middle class upper mobility family had an ideal scholastic background in school and school participation background, no aversive acting out, suspended, returned with a completely different rebellious set, and this continued on for some time.

Whether that was some kind of latent behavioral characteristic, I don't know, but if we are dealing with superficial behavioral characteristics, I would have to answer your question in the negative.

Q. Do you know any of the behavoral characteristics of the students involved here? A. No, nothing more than I have heard this morning.

Mr. Bustin: I think that's all the questions I have, Your Honor.

Proffer of aforementioned witness by Mr. Roos: Testimony from Robert Woody concerning the effect of suspension on college **(page 71)** admissions and the possible negative effects on college admissions.

This is a class action which affects many students beyond the particular — named plaintiffs, and consequently we feel that it is relevant to the trial at hand.

Mr. Bustin: We object to that as having any relevance to the particular issue here today.

NORVAL GOSS,

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bustin:

Q. Do you want to state your name, please? A. My name is Norval Goss.

Q. What is your position with the schools? A. I am the Director of Pupil Personnel.

Q. Can you describe that briefly, what that means? A. That involves keeping records of students attendance, enrollment, personnel records, cumulative files.

Q. For the record, Your Honor, on plaintiff's list of exhibits, this is listed as Exhibit 14.

Mr. Goss, I will hand you what has been marked as Defendant's Exhibit A and ask you to identify that. **(page 72)** A. This is a bulletin which has been sent from my office to principals concerning suspension of students. The date is July the tenth, 1973.

Q. Is the procedure now in force in the Columbus Public Schools? A. Yes, it is.

Q. Mr. Goss, have you had occasion to examine the cumulative records of the particular students which are involved in this litigation? A. Yes, I have.

Q. Have you examined those records in light of their point hours throughout the years? A. Yes.

Q. Mr. Goss, I will hand you what has been marked as Defendant Exhibit B and ask you to identify that. A. This is a sheet listing the number of credits earned during each year and the point average during each year of the students involved. It also gives, with the exception of Betty Crome who has not yet graduated, it gives their high school career.

Q. Is that compilation based upon the cumulative records which are listed on plaintiff exhibit? A. Yes, it is. From the cumulative records, I prepared it personally.

Q. Mr. Goss, has your department of pupil personnel at **(page 73)** any time since March or April of 1971 received any requests from other schools or employers for information concerning the suspension of these particular children? A. I would not be able to say that because the request would go to the individual school rather than to our department.

Q. It goes to the principal? A. Right.

Q. How many credits does it take in the Columbus Public School System to graduate? A. It takes 17.

Q. Mr. Goss, for clarification on Defendant Exhibit B, I notice under Dwight Lopez that for the year 68-69 a figure of two tenths is shown. What does that represent? A. That means that Dwight Lopez passed physical education only that year, the only subject that he passed, was two tenths of a credit in physical education.

Mr. Bustin: I think that's all the questions I have, Your Honor.

CROSS-EXAMINATION

By Mr. Roos:

Q. Mr. Goss, for how long have you been in the Columbus School System? A. Eighteen years. **(page 74)**

Q. Could you describe doing what? A. I started as a teacher, taught for three years; entered an administrative training program for a year; served as assistant principal of several different buildings. For the last three school years I have been in the Department of Pupil Personnel, the last two years as director of that department. The year, previous to that assisting the director of that department.

Q. In your experience in the Columbus School System, recognizing that you are now in pupil personnel, what was the effect on a student with respect to work

missed during the time that they were suspended? Did a student receive a zero for work missed? A. Yes.

Q. This would have an effect ultimately on the grades that a student received; would it not? A. It could have. In these cases it doesn't appear to have.

Q. That's uncertain. You say it doesn't appear? A. It doesn't appear to have. I can't say for sure.

A. But a zero would have an effect? Zero certainly is not a 50 or 100? A. That's right.

Mr. Bustin: Your Honor, I am going to object. I think this is beyond our direct **(page 75)** examination; argumentative.

The Court: I will agree to that.

Mr. Roos: Your Honor, I would like to call this witness as plaintiffs' witness.

The Court: You may go ahead. It's beyond the scope of the direct examination, Mr. Roos, but I am not going to let you call this witness in your own case now, because yo ushould have made that decision before .

I will let you continue your examination along the lines of what harm it will do, even though I consider it beyond the scope of the direct examination.

Mr. Roos: But you are not allowing me to call this witness as the plaintiffs' witness?

The Court: No, I am not.

By Mr. Roos:

Q. In your experience in the school system, are there other harms that can result from being out of school as a suspended student? A. Well, I am not a psychologist and I could not comment as the psychologist has commented. I would have to say that any absence from school can, of course, have negative effects, and that would include suspension from school.

Q. Educational effects, I would gather, is what you are **(page 76)** primarily talking about? A. They can have, not necessarily.

Q. But a zero automatically would have a negative effect, would it not? A. It obviously has a negative effect on that.

Q. Mr. Goss, you mentioned that new rules have been adopted concerning suspensions and expulsions; is that correct? A. This is essentially a statement of the procedures that have been in effect for a number of years.

The Court: Just give him a responsive answer. A. Yes, I am sorry. Yes.

Q. These are defendants Exhibit 14? A. Yes.

Q. Could you tell us the procedure that was utilized in adopting these rules? A. Now, is this the rules, July 10, 1973?

Q. That is correct, the July the 10th rules. A. Mr. Dumaree, who is the deputy superintendent of schools, and is responsible for administration of all the buildings, felt that it was very desirable for us to have a firmly written procedure of what we have always done.

We have relied in the past upon 3313.66 as giving the principal the authority to suspend a student, and we have not felt that it was specifically necessary for us to have a **(page 77)** specific statement of this. Mr. Dumaree felt that we should. He asked me to draft a copy of this.

After several draftings, revisions, consultation with various people in the school system and outside the school system, input from Dr. Ellis, the superintendent, and clearance by a committee of principals, this document was the final product.

Q. Was this document approved by the Board? A. No, this document was not and documents of this type are not normally approved by the Board of Education.

Q. It could be amended without the Board also; is that correct? A. Yes.

Q. In developing procedures, you rely primarily on 3313.66 of the Ohio Statute? A. That is—

The Court: I think this witness has stated that everyone in the educational system, all principals, relied on 3313.66 as the authority to suspend. . .

Mr. Roos: Nothing further of this witness, Your Honor.

The Court: Mr. Bustin, do you have any further questions?

Mr. Bustin: No, Your **(page 78)** Honor. I have no further questions of this witness.

By the Court:

Q. Mr. Goss, may I assume that since this procedure for suspension, which went out from you to all principals on July 10, 1973, may I assume that you are prepared to explain this procedure? A. Yes, sir.

Q. Let's go down to the paragraph or the part of the first page which is designated as suspension procedures. For the sake of my question, let us assume that a pupil at Central High School has engaged in an activity which interfered with the orderly functioning of the school, and a teacher brings that to the attention of the principal.

Let's go on with that language. "Whenever an incident occurs that may lead to a suspension, the principal or assistant principal shall investigate the nature of the alleged offense before commencing suspension procedures."

Tell us what that means? What does he do? What do you contemplate that a principal or an assistant principal would do in the investigation?

A. I think what it means is that they would look into the circumstances that have happened, give the student—call the student in, ask the teacher, ask the student what the situation has been, and get their sides of the story, so to speak. **(page 79)**

Q. No. We are not up to that yet. This procedure enjoins upon the principal or the assistant principal the

duty of investigating the alleged offense before commencing suspension procedures. What does that mean? What does he do? What do you contemplate that a principal or an assistant principal would do under that language? A. I am not sure exactly what you mean.

Q. Let me repeat it to you, Mr. Goss. For the sake of my question, we will assume that a student at the Central High School has been reported by his teacher. Let's say his home room teacher, if there is such a thing today, has been reported by his home room teacher as engaging in an activity which threatens or interferes with the orderly functioning of the school and the teacher comes to the principal's office and says so and so did this. What does the principal, or what is the principal obliged to do under the language of the first sentence there? A. It is our intention that the principal should talk with the student too, rather than just taking.—

Q. He is supposed to investigate it before he talks to the student; isn't he? A. No, that's part of the investigation.

Q. All right. Do you contemplate that you call the student into his office? A. Yes. **(page 80)**

Q. What happens then? A. He would ask the student what had happened too.

Q. Let's assume even that the person who makes the complaint against the student is present, do you contemplate that that person would be present while the student is being questioned? A. That would be at the discretion of the principal.

Q. So, the teacher that reported it may be there or may not be there depending upon the discretion of the principal; is that it? A. Yes.

Q. Let's assume that the teacher is not there. What do you contemplate the principal would say to the student? A. As I say, he would ask the student what had

happened so that he might present his side of the story, so to speak.

Q. Does a principal make any charge against the student at that point? A. Probably. He would say, your home room teacher has said that you did such and such; what do you say?

Q. Suppose the student denies it happens. A. Well, this becomes a matter of the judgment—

Q. You are at a hearing stage, but your language there, if you will look at your plan, in the second sentence, "Unless the pupil is unavailable or unwilling to discuss the incident with the principal. . ." **(page 81)**

Now, mind you, you are investigating the alleged misbehavior by the student. This investigation shall include a discussion with the pupil so that the pupil may be given an opportunity to be heard with respect to the alleged offense.

Are you at the hearing stage or are you at the investigative stage at that point?

A. I am not sure that we had enough legal consideration to make—

Q. What you are saying to the Court is that you don't know whether you are at the investigative stage or the hearing? A. Investigative and hearing in my terms would be very closely intermingled.

Q. Let's assume that you are in a hearing stage then. So far, this is what's happened: The teacher came to you and reported an incident to the principal, and the principal hears the story from the teacher and the principal calls the student into his office.

The teacher may or may not be there, and the student is confronted with this complaint made by his teacher, and he is given an opportunity to explain it or deny it, or admit it; is that correct, at that point?

A. Essentially, yes, I suppose.

Q. Let's assume that after the principal has had the complaint from the teacher and he has had the story or the defense or the explanation from the pupil, the principal decides to **(page 82)** suspend the pupil. At that point do you contemplate under these rules that you have sent out to all the principals that the principal would be acting then under Section 3313.66? A. Yes.

Q. They may suspend up to, is it ten days? A. Up to ten days.

Q. These rules or these guidelines or these suspension procedures that you have published provide that if the principal determines that grounds for suspension do exist, he then suspends the pupil; doesn't he? A. Yes.

Q. What does he say to the pupil- A. He is instructed to tell the pupil the reason for the suspension and the term, the length of the suspension.

Q. This also provides that the principal shall notify the pupil of the exact reason and the length of the suspension. Does he do that verbally or in writing? A. Probably both.

Q. What do you mean probably? A. The student is there — If the student is there, he would inform him that you are suspended for such and such an offense.

Q. And further informs the pupil that the suspension means that he must stay out, must stay — Next he must notify the parent or guardian of the suspension by phone, if **(page 83)** possible, and explain the reason and the length of the suspension. Does that contemplate that the parent or the guardian may not get a written notice of the suspension and the reasons for the suspension? A. No. If they contact them by phone, they would also get a letter.

Q. They would also get a letter. A. But they will attempt to notify them by phone because it is quicker.

Q. In the case of the ordinary suspension, is the pupil ordered off the property immediately? A. Again, it would depend upon whether the principal has been able to get in touch with the parents on the phone and tell them that the student is suspended, and is coming home, or they should come and get them.

Q. Under this plan, Mr. Goss, do you contemplate that the pupil will have the opportunity, except for his own statements, to the principal, to call any witnesses in his own defense? A. That would be the judgment of the principal.

Q. That's up to the principal and not the student; is that it? A. That's right.

The Court: That's all. You may step down. **(page 84)**

HERBERT E. RIE,

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Roos:

Q. Mr. Rie, will you please state your full name for the record. A. Herbert E. Rie.

Q. Could you tell the Court what your present position is? A. Yes, I am chief psychologist at Children's Hospital here in Columbus. I am Professor in the Ohio State University Departments of Pediatrics and Psychology.

Q. In the course of your experience as a psychologist, have you had experience in dealing with children? A. Yes, I deal almost exclusively with children and have for the last 15 years.

Q. In your experience as a psychologist, have you had dealings with children who have been excluded from schools, suspended, expelled, or otherwise? A. Yes.

Q. For how long have you had such sorts of dealings? A. Throughout that 15-year period to which I referred. **(page 85)**

Q. During the course of your experience, have you had an opportunity to observe psychological effects of exclusion from school? A. Yes, I have.

Q. Could you tell this Court the sorts of things that you have observed? A. Yes.

Mr. Bustin: Your Honor, for the record we make the same objection we did to the previous psychologist's testimony as to relevance, and I believe this is cumulative of this.

The Court: Go ahead.

A. My observations over the years have been that the effects of a child being excluded from school are essentially negative, though I would want to put my specific observations in the context that one cannot, of course, speak unequivocally about the adaptation of all individuals to a given circumstance.

There are going to be exceptions and hence it's almost impossible to predict before hand whether all children are going to respond in a given way. The majority, however, in my opinion, respond to a greater or lesser degree in the way that I would like to describe:

First: There is in many cases an impact upon the child's feelings regarding himself. It tends to be a blow to his self **(page 86)** esteem; and

Secondly: It tends to generate feelings of relative powerlessness and helplessness in the child.

It tends further to affect his attitudes toward the school or toward the school system or towards specific school personnel such that he is inclined, following such an episode, to view the school system with greater resentment, suspicion and fear.

It is likely to affect the child further in that certain incidental learning occurs, not intended. It occurs unwittingly. That is by being excluded from school, on the occasion of a problem, there invariably is a problem or suspected problem, the child learns with this termination of communication and interaction that this is the preferred mode of contending with problems, namely that one interposes space and time between those individuals who have encountered the problem between them.

Secondly: It confirms for him that on the occasion of a problem between an individual and an adult in authority over him, in this case the school teacher or the school personnel in his particular school, that given the termination of communication and the exclusion of the child, there can be, for him, little explanation, little understanding, little confirmation of what has actually occurred, what it is that he has done for which he is being excluded in explicit terms, and hence the **(page 87)** likelihood that his own inferences unchecked by any communication with those who have imposed this particular management upon him without the opportunity to check in a sense the reality of his own inferences. These are very often in children who are in trouble likely to be far more devastating than perhaps was intended.

There is furthermore in our experience, particularly if there have been repeated exclusions from school, the probability of the child being stigmatized and treated prejudicially thereafter.

We have a great deal of evidence both with respect to positive expectations on the part of a school system concerning a child, or in this instance negative, that individuals dealing with the school child are likely to contend with him consistent with those expectations and thereby, on the basis of this prior knowledge and expectations, to alter their modes of dealing with them.

In this instance, expecting him in a sense to be a so-called trouble maker, and dealing with him on the basis not of verifiable pre-characteristics of the child but rather

on the basis of the past record of his having been expelled.

Finally, and lastly —

Q. May I interject at this point? A. Yes.

The Court: No. Would you mind letting the doctor conclude finally, **(page 88)** because I will have a couple questions.

Mr. Roos: Fine.

The Court: Go ahead.

A. I wanted to add as a supplement in a sense to what I have said already what I would regard as a number of possible, what I suppose I would call second order effects:

They may or may not occur. They occur in some cases.

Given the circumstances I have referred to thus far, the child is identified as one of the consequences, as the problem, and there is therefore often, not invariably but often, failure to seek the other conditions which interacted with the child to lead to his exclusion from school.

That is if one has identified the problem, one has acted upon it, there is, of course, little need logically to do anything else.

There is then the consequent failure in some cases to seek help for the child if he needs it, because the problem has ostensibly been dealt with, and furthermore the feelings engendered by his behavior that has led to the exclusion are not conducive to sympathetic concern for the child.

There may be general disapproval of the child as a consequence of his expulsion by his family, by neighbors, by acquaintances who then regard him with further suspicion, with expectations that indeed he is going to be a trouble maker, and the child in that sense may be further alienated from resources **(page 89)** than he is already.

Finally: It seems to me there is, in many cases, the child's inability to maintain himself academically and the feelings attendant upon that, particularly if the exclusion is prolonged, or if there are frequent exclusions from school.

By The Court:

Q. Doctor, you frequently used the term the child in the testimony you have just given. Does the term the child include students through the high school years, that is through what we know as the ninth, tenth, and eleventh grades? A. As I am using it, it does, though at the different levels, the different kinds of multiple reactions I have spoken of would generally be experienced in differing degrees.

Q. Doctor, you may or may not know that in Ohio a suspension may not be for more than ten days. Assuming that a suspension from school is for ten days or less, are all of the statements you have made equally valid to this period of ten days? A. Yes, sir, in the context within which I placed them initially that the reaction will vary from child to child and will surely be dependent upon the frequence of any such exclusion for any given child.

The Court: Go ahead.

By Mr. Roos:

Q. With respect to a child who views himself as innocent **(page 90)** and who is not given an opportunity to contest his innocence, would the effects you described be greater or lesser, and to what extent?

Mr. Bustin: Objection, Your Honor.

The Court: I will overrule your objection, but I think I know how the doctor is going to answer that question.

A. I would say that the effects upon a child who has in this sense been unjustly excluded from school might be different, that is with respect to the particular reac-

tions the child has. I have listed a variety of potential reactions.

The child who is in your sense unjustly excluded from school is not as likely to have a blow to his self esteem given what he knows of his own behavior and status as the child with whom that isn't the case. He is far more likely however to react with resentment against the system which has treated him as he would view it, I assume, unjustly.

The Court: Doctor, that's equally true in any other system in life; isn't it?

A. Surely.

The Court: You may proceed.

Mr. Roos: No further questions of this witness, Your Honor.

(page 91)

CROSS-EXAMINATION

By Mr. Bustin:

Q. Doctor, have you had an opportunity to actually examine the respective plaintiffs, children in this particular case? A. I have not.

Q. Have you looked or examined or studied their school records? A. I don't know the plaintiffs.

Q. You don't know at all? A. I do not.

The Court: Let me say, doctor, there are five plaintiffs here.

A. Let me say then, in response to your question, that since our psychology staff at the hospital sees some 1300 children per year, it is conceivable that someone on my staff or I perhaps even have indeed seen one of these plaintiffs, but not in connection with this particular action and not in preparation for it.

Q. I take it by your testimony then you have not examined their school records, their cumulative records? A. I have not.

Q. Have you talked to any of the school officials at any of the schools involved, Marion Franklin, Central, McGuffey? **(page 92)** A. Not about this particular action or the behavior which brings the students here, no. We communicate with the students constantly and, of course, have communications with these particular schools you have mentioned regarding many students and many problems, but again not regarding this particular action.

Mr. Bustin: No further questions, Your Honor.

Mr. Roos: Nothing further of this witness.

By The Court:

Q. Dr. Rie, over the broad range of pupils, whether they are in the primary grades or the secondary grades, who are subjected to a suspension under Ohio Law, do you have any opinion as to whether or not the effects are generally harmful?

Now, I have in mind, of course, the qualification that you made before you started your testimony, but what I sincerely want to know from you is whether or not the disciplinary measure of suspension of a pupil from a primary or a secondary school in Ohio is generally harmful?

A. I would say that generally it is. Modified, however, again by the provision simply that it need not be devastating; that there are few events in the lives of children, single events, which are "so-called traumatic."

We do not assume and have no reason to believe that the **(page 93)** personality development or the full range of an individual subsequent adaptation is ever affected in a significant way by a single occurrence in his life. Typically we are speaking of cumulative effects but the general effect of this kind of action by a school upon a child is harmful even in a mild degree and in contrast from a psychologic prospective.

It is difficult indeed to find anything that would be beneficial in this kind of action save in one instance, in

that instance in which the school child, and I mean the full age range of school, kindergarten through high school, in which the child finds the school situation for whatever reason so tense, so anxiety provoking, so disorganizing in a sense for him that he cannot adapt to it in a useful way that's acceptable.

Under those circumstances of extreme tension, it may be helpful to the child to separate him from that environment temporarily for his own relief; however, as in most instances, children and adults as well react under crisis far better if they have an opportunity to know what the circumstances are, if they are given the chance to predict what is going to ensue, and hence even in that instance from a psychologic prospective, it would be preferable with prior communication about the intent of the action.

Q. Is that your professional way of saying, doctor, that when a student, we will say, at the high school level is charged **(page 94)** with an infraction of the rules or some other activity which threatens the orderly functioning of the class in which he is located, that it is far better to give that person an explanation of what he did and give him an opportunity to defend himself, so to speak? A. I would certainly think so. Again, there are exceptions, of course, to most everything. As I said, one can generalize, but human beings, and if there is an occasion of extreme emergency, obviously one must act immediately. In the instance of a suicide attempt or presumed suicide attempt, anticipated suicide attempt. I am choosing that explicitly not as a school problem but as a psychologic problem. One doesn't wait. One obviously intervenes.

Q. You have to act under, shall we say, the necessity of the expediency of the circumstances? That is to say, if a student, a pretty well-grown, 16-year old goy gets up and strikes a female teacher, he should be removed immediately; is that correct? A. Surely.

Q. If he isn't removed immediately what, if any, effect would that have on the other students, doctor? A. Well, it could be a very negative effect through example, namely that it's possible to do that, and in fact not be dealt with. Q. Wouldn't it encourage these other ones to get up and **(page 95)** sock the teach also? A. It might. I would say, yes, but I think removing the child from the immediate circumstances, the class room or the game, or whenever it might have occurred, is not necessarily to imply that he should be suspended, but rather that something useful should be done about the particular infraction.
would assume the circumstances under which it occurred, why it occurred.

Q. Does that mean, or do you think that socking a teacher is some times defensible? A. No. On the contrary, I think it's totally indefensible.

Q. Doctor—and I ask this question quite sincerely too—assuming that the practice of suspension as a disciplinary measure does not do the job for which it is intended, what do you suggest as a substitute for suspension? A. Well, I think in part, Your Honor, we are getting into a field, school administration, which is out of my range of competence. That is my reason for being here, is to comment on the potential psychologic effects of this particular action.

It is conceivable even if I assumed that this was inequivocally in al lcases negative, that would still would have to result to the —

Q. You can testify as a trained and experienced clinical **(page 96)** psychologist. You have devoted some time here to pointing out the harmful effect of the suspension of a child from his ordinary course at school. I don't think any right minded person would deny the fact that the interruption of schooling is going to have some effect upon a child. Some more harmful than others, but given

the necessity for maintaining order in a classroom, and in a school, and given the necessity for the respect of property rights, psychologically what should be done with a child who has, let's say, a flagrant infraction of a rule of the school. A. Well, all right, I will pursue that.

Q. In lieu of suspension. A. It seems to me the first step would be to determine the basis for that, or the reason for that particular action on the part of the student, explicitly and in detail. A psychologic status of the student that makes it impossible for him to deal with anger or whatever the feeling.

Q. Does that mean that that particular student would have to be subjected to rather extensive psychological testing and investigation? A. He might but on the other hand it would be —

Q. Who would do that? A. — useful initially to determine what one can from his prior school history since it is in that contact that the behavior occurred. **(page 97)**

Q. Who would make such an investigation? A. Typically there are certain school personnel available, school psychologists, guidance counsellors available to the principal if he would want to pursue it. Certainly in conjunction with the parents and one of the problems is that the parents are not consulted by the schools until the school is ready to take some action. Other outside agencies are available.

Q. On that point, doctor, if school authorities had the opportunity to consult with parents when an incident occurs and before the imposition of suspension, do you consider that that would be helpful in the resolution of the problem with the child? A. Yes, potentially I can't guarantee that it would be helpful in all cases, but certainly one ought to make that effort since the parents

constitute the other major influence available to the schools in the child's immediate life.

Q. Unfortunately it seems that parents don't constitute the major influence, and though they should by and large be the major influence. A. They may not constitute the kind of influence upon the child in all cases that the rest of society would hope, but because they are major influences on what they have done, or have not done, is not really, I don't think, justifiably arguable. **(page 98)**

There are other agencies available to the schools. As an example the Children's Mental Health Clinic located next to the University has a program. There is a Court Consultation Unit which that same Mental Health Center operates in conjunction with the Family Relations Court here in Columbus, and there are other agencies; the Diocesean Child Guidance Center, and indeed our own Children's Hospital which has some 120,-130,000 out patient visits a year.

There are resources if they don't exist within the school system for determining the basis for the child's behavior and hopefully for contributing to the development of some plan that the school might undertake in dealing with the child or having others deal with the child if it proves to be a serious and chronic problem.

Q. Doctor, if a procedure were, let us say, adopted by the Columbus Public Schools under which a student who was charged with an infraction or a violation of the rules, for whatever reason, were given a hearing before the principal or the vice principal of such a school, would it be advisable or helpful to require the presence of both parents or at least one parent at such a hearing? A. I would put it rather that it would be desirable for the parents to be there, and at least to have the opportunity

to be there. Whether one wants to specify that they must be there, you have used the word required to be there, I don't know. **(page 99)**

If they were not inclined to be there when given the opportunity, requiring them to be there is not likely in view of our past experience of trying to impose help in a sense on people is not likely to yield favorable results, but certainly the opportunity to be there, yes.

Q. I suppose, doctor, your answer means that the school authorities could not require the involvement of the parents in any disciplinary procedure? A. Well, I assume.

Q. Wouldn't it tell you a great deal about the behavior of a child if a parent or parents were given the opportunity to attend a suspension hearing and they deliberately declined to participate in it? A. It would certainly focus on one of the likely reasons for the child not functioning in a socially accepted way, yes.

The Court: Thank you, doctor. You may leave the witness stand.

FLOYD PRESTON HORTON,

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Roos:

Q. Please state your name for the record. A. Floyd Preston Horton. **(page 100)**

Q. Mr. Horton, could you briefly describe your educational background? A. Yes. I have a Bachelor of Science degree in music from West Virginia State College; a Master's degree in guidance and counselling from Marshall University, and I am presently in the doctoral program in educational administration at Ohio State University.

Q. Please state your employment background insofar

as it relates to schools and the field of education. A. I have served as a teacher of math and science with the Southwestern City Schools for one year, 67-68 year; the students that I worked with were described as "emotionally disturbed." They were the children from the Franklin County Children's Home.

I have spent four years as a high school guidance counsellor at Linden McKinley High School here in Columbus.

Q. What four years were those? A. 1968 through 1972, and I have worked in summer programs, drop out prevention projects, two summers, here in Columbus. It is a part of the Columbus Public Schools, and I have worked one year at the Columbus Children's Psychiatric Hospital as a social studies teacher. That was one summer.

Q. Could you describe briefly the duties of a guidance counsellor in the Columbus School System? A. Well, I would like to describe them in a general way **(page 101)** because the duties, depending on where one serves, can be, you know, fixed to that school, but in general there are three areas in which a counsellor tries to work with students, and that's in the personal development or what you would call individual counselling with the student and the educational aspects in terms of arranging your schedule for courses, course sequence, and in planning for whatever course of study you may want to take after high school, post high school; whether it be vocational or college or whatever, and of course in terms of career aspects of guidance.

You want to try to help students to tune into what types of jobs and their levels in family clusters that are available and so they can see where they might be able to fit into occupations or career goal.

Q. In your experience as a guidance counsellor, did you have an opportunity to observe the educational effects of a suspension? A. Yes. I would like to say that the things that I observed about educational suspension

are, first of all, that a student, and this is nothing earth shaking or earth shattering, but a student misses that work that goes on, and all the other activities of the school then when they are not there, when they are not present, and many cases they are not allowed to make up the work, so that of course affects not only —

(page 102)

The Court: Mr. Horton, the student is not allowed to make up the work. Then does that mean there is no provision made in the school itself for a teacher to take that child and say, now we are going to go over the lesson that you would have learned or studied the first day, the second day, the third day, and the fourth day? What do you mean by saying that the child is not allowed to make up the work?

A. Well, I am saying that in my experience is that each teachers are not disposed to, and/or not necessarily required. Required, yes, to let a student, to allow a student make up work that was done during the time that they were suspended.

Now, I am not saying that this does not happen in any cases, because the teacher can do that and some do, some do allow them to make it up and will give the assignments to another student to take to them, but I am saying this is not the general rule in my experience.

Q. Students who are suspended usually receive zeros or F's on work missed? A. Yes. They don't get credit for work that they don't do.

Q. Are there times of the year, special times of the year, when a suspension given during those times can be especially damaging? A. Yes. There are many activities that occur during the **(page 103)** course of a school year in terms of contests, tests, different kinds of award things that you may apply for or you may be recommended to participate in.

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, et al.,
Appellants.

v.

EILEEN LOPEZ, ETC., et al.,
Appellees.

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

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Judgment of District Court Included in Jurisdictional Statement at Pages 18-19

For instance, first I will take the testing thing. We have, in Columbus, a testing week which used to be in October and I think it's been expanded now to two weeks. Of course now it's also in April. They have changed that time, but if a student, all tenth graders are required to take three tests. An intelligence test, an arithmetic achievement test and a language test.

Now, if a student is absent during that time, he more than likely will not be able to make up that test because the way the testing schedule is set up, you are to take tests during a specified time. Usually makeups are given toward the end of that period, but once that period of one week or two weeks, whatever, is over, they don't get a chance to take the test.

Now, that test is important. Now, this is just for tenth graders I am talking about. That test is important because the Columbus Testing Profile is a part of the student's school record, and you can see a comparison on national norms, you know, where the student falls below average, average, or above average, with other students across the nation.

The Court: Are there other things similar to this that if a student were out for a **(page 104)** given period of time, he might miss and not be able to make up? A. Yes, like the Ohio tests of scholastic achievement. This is something that a student volunteers to participate in, but the ratings or rankings are given dependent upon how you score in the sub category in your school. If you score in the top fourth of the category in your school, like in biology for instance, then you are eligible to go to State competition.

It is very desirable to have on a student's record that he finished, say, first, second, or even fifth, in his school in biology.

Q. If you miss some of these contests, can you—A. It only occurs once a year, so you get it the next year, and then there are contests like the Voice of Democracy, like Americanism in Government tests. There are a number of things that occur.

These things that I am mentioning, I administer these in the schools. There are college conferences that I conducted at least, you know, one a week; some times two and three a week. Okay. If a certain college, or two or three colleges, you know, come in at a particular time that a student is suspended, they only come once a year, so they don't get to talk with the admission counsellors and things like that.

Q. Do suspensions, in your judgment or experience in the Columbus system, have any role in the tracking system in (**page 105**) Columbus?

Q. Could you describe the tracking system as it operates in Columbus? A. Yes. We do have a tracking system in Columbus. What I mean by that is that you have in general four placement categories of students, starting from the top you have honor students or students that are placed in honor classes, and then you have what we call just the regular classes. Then going down the hierarchy, the modified classes, and then the special classes.

Now, each of these categories has to do with a student's ability to do work, you know, based on what they have done in the past and based on perhaps IQ scores. That's part of it too, because you are placed in special based on IQ tests.

Q. You have described the tracking system. Could you describe in your experience very rapidly how a suspension may affect the ability to move from one track to another? A. Well, in a general way, and of course now this is, you know, my observation and my opinion, but many teachers seem to equate decorum or behavior in the classroom with educational ability, or if not educational ability, educational interests and attitude. Okay.

Now, I am saying that I have seen in some cases where because of the student's —

Mr. Bustin: Objection . . . (**page 106**)

Q. Mr. Horton, can you just briefly, sir, explain how this suspension may affect tracking? A. Students are some times allowed, depending on their progress in school, to move from one track to another; say from modified to regular. Okay. Or, it can go the other way, from regular to modified, and I am saying that, you know, a student's behavior can influence this kind of decision.

That's what I am saying, and some times does. That's all I am saying.

Q. The track you are in influences many other things as well? A. Yes.

Q. As a guidance counsellor, were you regularly asked to give college recommendations? A. Yes. In fact that was my responsibility for two years, one of my responsibilities like the last two years.

Q. Did you rely on a full file that was given to you in assessing a student in filling out recommendations? A. Yes, and I tried to submit as complete information to a school as possible.

Q. Do these files often contain letters of suspension of a student if the student has been suspended? A. Yes.

(Colloquy between Counsel and Court) (**page 107**)

By Mr. Roos:

Q. While you were a guidance counsellor, did you receive inquiries from potential employers of students who were —

The Court: That's another question along exactly the same line.

Mr. Roos: I have nothing further of this witness.

CROSS-EXAMINATION

By Mr. Bustin:

Q. Mr. Horton, in speaking about this tracking record that you did, or, no, let's talk about these special tests and stuff you were talking about that were given only once a year. If the student at the time this particular test was given happened to be sick or otherwise involved, would he miss that test also then? A. Yes.

Q. Mr. Horton, have you examined the cumulative files of the particular plaintiffs involved in this litigation? A. No.

Q. Do you know anything of their personal background or behavioral characteristics? A. No, I do not.

Mr. Bustin: Thank you. **(page 108)** No further questions, Your Honor.

The Court: That's all. Thank you, Mr. Horton, for coming here. You are excused.

(page 109)

(Certificate of Court Reporter Omitted in Printing)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION
Civil Action No. 71-67
(Title Omitted in Printing)

(page 2)

PROCEEDINGS

Before the Honorable Joseph P. Kinneary, Chief Judge, sitting at Columbus, Ohio, July 16, 1973, Addendum to Transcript of Testimony.

The Court: Who do you wish to call now, if anyone?

Mr. Bustin: Your Honor, before I go to that point, I would like to renew our motion to dismiss. We do not believe that the evidence presented today, there has been a showing of involvement —

The Court: I will consider your motion to dismiss upon the grounds that you have set out in your trial memoranda, all your trial memoranda, and your pretrial brief.

Mr. Bustin: We would like for the record to renew our objection to the testimony of both psychologists and Mr. Horton, and move that it be stricken as pure speculation.

The Court: That is over-ruled.

Mr. Bustin: Just one second. May I have one second?

The Court: Yes surely.

THEREUPON followed a discussion at defense counsel table.

Mr. Bustin: With the witness that we put on out of order, the defendants will rest.

• • •

(Certificate of Court Reporter Omitted in Printing)

EXHIBIT 1(A)

Superintendent of Schools - Harold H. Eibling

CENTRAL HIGH SCHOOL
75 Washington Boulevard, Columbus, Ohio 43215

February 26, 1971

Mr. and Mrs. Manuel Lopez
831 Franklin Ave.
Columbus, Ohio

Dear Mr. and Mrs. Lopez:

We have had a continued problem in school for several days and today a group of students disrupted our complete school program.

Dwight was in the group and we need to have a personal conference with you and Dwight to determine what the problems may be.

Please keep him at home until a conference can be arranged. This will take some time. We will be communicating with you.

Respectfully,

CALVIN PARK
Principal

EXHIBIT 1 B

Superintendent of Schools - Harold H. Eibling

CENTRAL HIGH SCHOOL
75 Washington Boulevard, Columbus, Ohio 43215
Telephone 224-3184

March 1, 1971

Mr. and Mrs. Emanuel Lopez
831 Franklin Avenue
Columbus, Ohio

Dear Mr. and Mrs. Lopez:

It will be necessary for you to appear at the Board of Education before Dwight returns to school. I have given your telephone number to Mr. Williams of the Pupil Personnel office of the Board of Education. He will be in touch with you to set up an appointment.

Dwight is to remain home during the hours school is in session.

Yours truly,
JAMES C. FURGASON

EXHIBIT 1 C

61 S. Sixth St.
Columbus, Ohio 43215
March 5, 1971

Mr. & Mrs. Emanuel Lopez
1112 Miller Avenue
Columbus, Ohio

Dear Mr. & Mrs. Lopez:

An appointment has been arranged for you and your son, Dwight, to appear at the Pupil Personnel Office on Monday, March 8th, at 8:30 a.m.

Sincerely,

H. M. WILLIAMS, *Director*
Pupil Personnel

EXHIBIT 1 D

COLUMBUS PUBLIC SCHOOLS
270 East State Street, Columbus, Ohio 43215

March 24, 1971

Mrs. Eileen Lopez
1112 Miller Avenue
Columbus, Ohio 43206

Dear Mrs. Lopez:

I have received a letter from your daughter, Mrs. Alana Robinson, pertaining to your son, Dwight. She was inquiring as to the status of Dwight and his returning to school in Columbus.

As you no doubt recall, I had scheduled an appointment with you and Dwight on March 8, 1971 at 8:30 a.m. The purpose of this conference was to discuss various possibilities relating to Dwight's future educational plans.

This appointment was not kept nor did I receive from you a request to set up another conference. Since Dwight is 19 years of age and is no longer of compulsory school age, I thought that possibly you had made other plans for Dwight.

In regards to Dwight's placement in a Columbus School, permission is granted for him to enroll in Adult Day School, 272 S. Nelson Road, immediately. Waiver of fees is being recommended.

Sincerely,

H. M. WILLIAMS, *Director*
Pupil Personnel

EXHIBIT 1 E

COLUMBUS PUBLIC SCHOOLS

ACADEMIC RECORD

Evening Central SENIOR HIGH SCHOOL

(To be Retained)

NAME Lopez Dwight Anthony HOME ROOM

ADDRESS 1112 Miller Avenue PHONE 253 3475

RESIDES WITH Manuel Lopez RELATIONSHIP

DATE OF BIRTH DATE ENTERED

	DATE	REASON
WITHDRAWN	3/25/72	Adult Day School
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

PHOTO

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME

ADDRESS

PHONE

Exhibit 1 E continued

Evening HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME Lopez Dwight Anthony

SEX M. DATE OF BIRTH 7 12 51 PLACE OF BIRTH Columbus Ohio

PARENT OR GUARDIAN

DATE ENTERED ADMITTED FROM Mohawk Junior H.S. Columbus Ohio

(Day) (Year)

☐ WAS NOT GRADUATED ☐ WAS GRADUATED DATE OF DIPLOMA

NUMBER IN GRADUATING CLASS 129 RANK IN CLASS 95 AS COMPUTED 5-3-72

POINT AVERAGE 1.0370 AS COMPUTED 2-16-72 PRINCIPAL

SUBJECT	9	10	11	12			CREDIT
Black Lit. x				9/10 D			.5
Journalism							
Speech I (Public, Radio and Television)							
Speech II (Dramatics)							
World History			9/10 F				
American History			9/10 F	9/10 D	.5		
Principles of Democracy			9/10 C				
Current History			9/10 B	9/10 B	1		
Geography							

SUBJECT	9	10	11	12			CREDIT
General Mathematics	M		9/10 D				1
Basic Mathematics			9/10 F				
Algebra I							
Algebra II							
Geometry (Plane & Solid)							
Trigonometry							
Analytical Geometry							
Advanced Mathematics V							
Senior Service Arithmetic							
Basic Math II				9/10 D			.1
General Science I	M		9/10 D				1
Physical Science II							
Biology I	M		9/10 F	9/10 D	1		
Biology II							
Chemistry							
Physics							
French I							
II							
III							
IV							
V							
Spanish I							
II							
III							
IV							
V							
Latin I							
II							
III							

*Marks in the boxes show locations of A's for multiples. Credit shown in regular

Exhibit 1 E continued

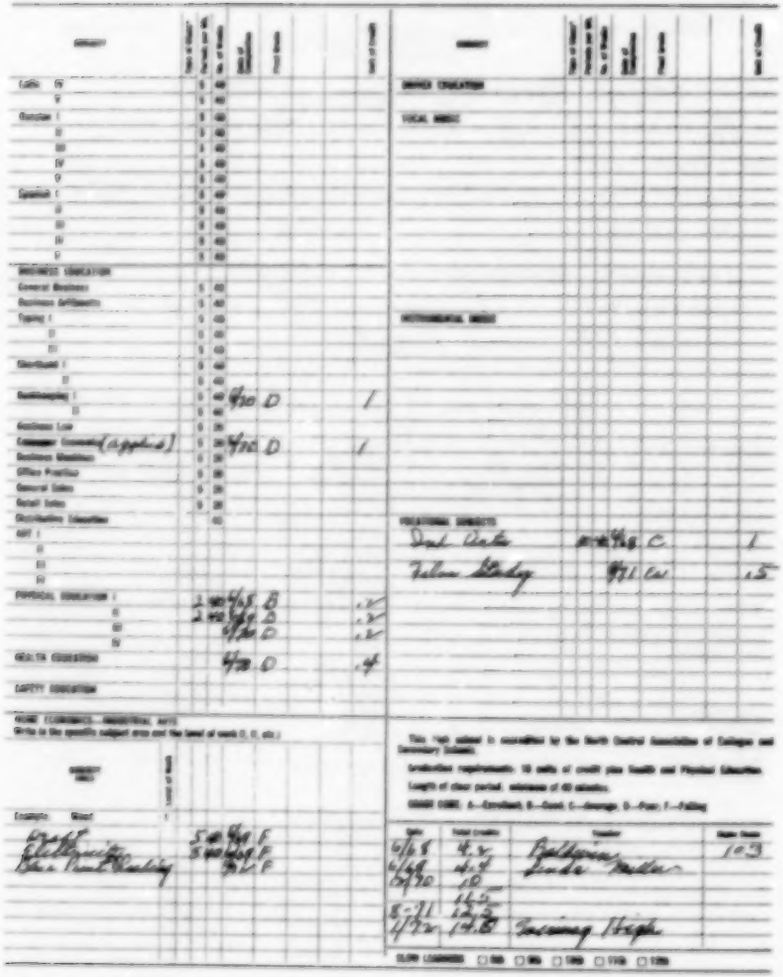


Exhibit 1 E continued

TRANSCRIPT RECORD

DATE	SENT TO	COMMENTS
3/25/71	Adult Day School	

NAME Lopez, Dwight (M) F

HOME ROOM 210 310 103 LRC

GRADE LEVEL 7 8 9 10

PROMOTED FROM Douglas ELEMENTARY SCHOOL—DATE 6-11-65

GRADUATED FROM Roland JUNIOR HIGH SCHOOL—DATE 6-7-68

GRADUATED FROM SENIOR HIGH SCHOOL—DATE

CUMULATIVE PERSONAL RECORD

Columbus, Ohio, Public Schools

IN CASE OF EMERGENCY NOTIFY:

NAME Jose Manuel Lopez

ADDRESS 405 Clinton Ave. Columbus, O. 43222

NAME Ana Luisa Lopez

ADDRESS 719 Hawkes Ave. Columbus, O. 43203

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY
Roland	6-7-68	Hi-Y

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	EARNINGS	REMARKS
6/68	Lens Stock Boy		

OUT-OF-SCHOOL ACTIVITIES

DATE	
Sept	Boy Scouts

Exhibit 1 E continued

RESIDENTIAL DATA

NAME	GRADE	ENTERED	LEFT	FROM	TO	ADDRESS	PHONE	REMARKS		
Douglas	6	9-8-64	9-65	Nine Separated (Apt. #4)		Franklin		Mother		
Roland	7	9-65								
	8									
	9									
	10									
	11									
	12									

PARENTAL DATA

	NAME	SEX	RACE	OCCUPATION	BUSINESS ADDRESS	HOME PHONE	BUSINESS PHONE
FATHER	Lopez, Manuel		Sep				
MOTHER	Ester		Sep	motor Veh Co	719 Hawkes Ave		
STEP-FATHER							
GUARDIAN							

ATTENDANCE DATA

NAME	GRADE	ENTERED	LEFT	DAYS ABSENT	DAYS TARDY	TIMES TARDY	REASON FOR LEAVING
Douglas	6	9-8-64	6-65	10	13	13	Boy Scout Camporee
Roland	7	9-65		9	13	13	
	8						
	9						
	10						
	11						
	12						

COUNSELING RECORD

DATE	TYPE	REMARKS

Exhibit 1 E continued

Exhibit 1 E continued

TEST DATA

INTELLIGENCE

DATE	GRADE LEVEL	NAME OF TEST	FORM	TYPE	IQ	MA	VERB.	NO. ABBR.	TOTAL	% TILE
10-12-64	6	Stanford Binet	S	Abbr	85	11.8			85	
10-66	8	Wood	A	GR	93	12.4			87	

OTHER STANDARDIZED TESTS

DATE	GRADE LEVEL	TYPE	NAME OF TEST	FORM	CITY NORMS YES	CITY NORMS NO	RESULTS
5-13-64	5	Ach.	Calif. Achiev.	X		X	Gr. Pl. 5.9
2-23-65	6	Ach.	Stanford Ach.	X	X		Ar 6.1
4-5-66	8	Ach.	Stanford Ach.	X	X		Ar 5.8
10-66	8	Prog.	Self	M	X		Eng 6.7 Spl 6.7 Ar 6.7
10-66	8	Ach.	"	M	X		Eng 6.3 Spl 6.5 Ar 7.4

PERSONALITY TRAITS

	6	7	8	9	10	11	12
INITIATIVE							
Works vigorously							
Solves problems		✓					
Frequently initiates	✓						
Self-reliant			✓		✓		
Actively creative							
WORK HABITS							
Solves problems					✓		
Works well under pressure		✓					
Needs occasional prodding	✓		✓				
Consistently prepared							
Seeks additional work							
INFLUENCE AND LEADERSHIP							
Popular							
Co-operates but not willing							
Contributing to school affairs	✓		✓				
Contributes to important affairs							
Frequently requested - takes things to							

	6	7	8	9	10	11	12
CONCERN FOR OTHERS							
Unaffected							
Self-centered							
Somewhat socially concerned	✓		✓				
Usually concerned							
Really concerned							
RESPONSIBILITY							
Irresponsible							
Somewhat dependable		✓		✓			
Usually dependable	✓		✓				
Conscientious							
Assumes much responsibility							
EMOTIONAL STABILITY							
Unstable							
Erratic							
Usually well-balanced	✓		✓				
Consistently calm							

	6	7	8	9	10	11	12
ATTENTION TO SCHOOL REGULATIONS							
Actively opposes regulations							
Indifferent							
Usually responsive	✓		✓		✓		
Follows regulations unquestioningly							
Is completely school citizen							
PERSONAL APPEARANCE AND DRESS							
Consistently inappropriate	✓		✓		✓		
Tendency to follow extreme trends							
Usually tidy			✓				
Neat and dressed to good taste							
Consistently attractive appearance							
ADDITIONAL COMMENTS							

ADDITIONAL TESTS RESULTS - COMMENTS

Exhibit 1 E continued

ELEMENTARY SUMMARY

NAME Lopez, Dwight (M) FROM Douglas Elementary School

BIRTHPLACE Columbus Ohio BIRTH DATE 7-16-51 VALIDATION B.C.

GENERAL ACADEMIC RATING

Excellent	
Above Average	
Average	✓
Below Average	
Poor	

SPECIAL APTITUDES

HEALTH DATA

Vision		Heart	
Hearing		Lungs	
Weight		Tuberculin Tests	
Posture		Glands	
Speech		Nutrition	
Physical		Allergies	

SPECIAL RECOMMENDATIONS

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

SERIOUS ILLNESS - ACCIDENTS

	DATE		DATE

NOTE: The elementary school will provide test data, personal data and further information on pupils if and as indicated.

ADDITIONAL INFORMATION (to be filled and signed)

ELEMENTARY

Attendance has been a problem. He is capable of doing the work well, but he will not do it usually. Hearing complaints have impeded progress. DLS 6/65

Attendance still a problem. He makes little effort to do the work but he is quite intelligent and seems to have much knowledge about many things. His spelling is atrocious (almost illiterate). Mr. Jeffords...

12-13-66 Suspended for fighting

IMMUNIZATIONS

TYPE	DATE
Smallpox	
DPT	
Polio Salk Vac.	

EXHIBIT 2 A

Superintendent of Schools - Harold H. Eibling

McGUFFEY ELEMENTARY SCHOOL
2632 McGuffey Road, Columbus, Ohio 43211

March 3, 1971

Mrs. Martha Jane Adams
1666 E. 25th Ave.
Columbus, Ohio 43219

Dear Mrs. Adams:

This is official notification that your son/daughter, Betty Jane Crome has been temporarily suspended from McGuffey Jr. High. This suspension will continue until March 8, 1971 at 10:45 at which time you are to accompany him/her to school for a conference. During this time he/she is to remain at home during school.

Yours respectfully,

FRANK D. MASON
Principal

EXHIBIT 2 B

(Reconstructed For Clarity in Printing)

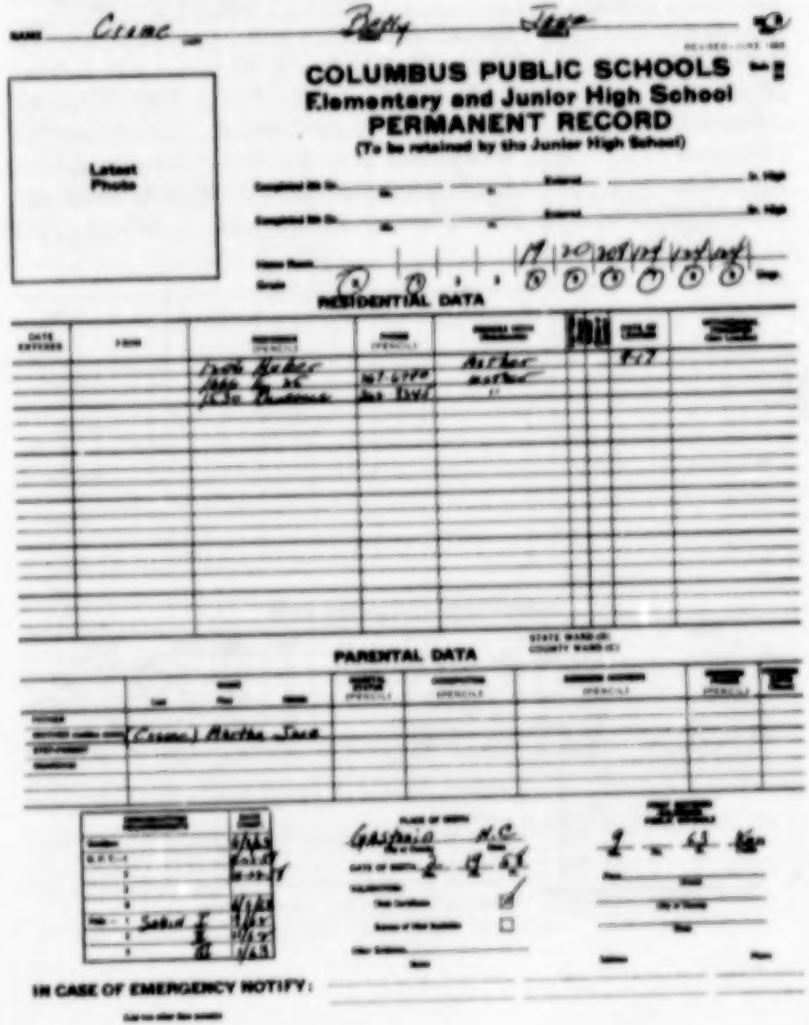


Exhibit 2 B continued

ELEMENTARY SCHOLARSHIP DATA

| School | Grade | D. A. Yrs. | Teacher | | |

Exhibit 2 B continued

TEST DATA

INDIVIDUAL INTELLIGENCE

DATE	GRADE	NAME OF TEST	C.A.	M.A.	I.Q.	ADMINISTERED BY PERSON TESTING & DEPARTMENT
9-21-65	2	Kuhlmann-Anderson	7-7		98	

REMARKS: FOR ELEMENTARY USE

3/64 Rpt Inc Clark R. Readiness 41 High Avg.

4/67 Betty is a darling girl - Very likable - does not understand the purpose of Report Cards

REMARKS: FOR JUNIOR HIGH USE

280

Exhibit 2 B continued

CUMULATIVE PERSONAL RECORD

Columbus, Ohio, Public Schools

LEGAL NAME _____ SEX _____ AGE _____ (Yr.) _____ (Mo.)

HOME ROOM 124 124

GRADE LEVEL 2 3

PROMOTED FROM Mallory Park ELEMENTARY SCHOOL—DATE 6/70

GRADUATED FROM _____ JUNIOR HIGH SCHOOL—DATE _____

GRADUATED FROM _____ SENIOR HIGH SCHOOL—DATE _____

IN CASE OF EMERGENCY NOTIFY

NAME Mrs. Hazel Hogue PHONE 542-3327

ADDRESS 524 Hogue

NAME _____ PHONE _____

ADDRESS _____

HONORS AND RECOGNITIONS

SCHOOL	SCHOOL YEAR DATE	RECOGNITION

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY

OUT-OF-SCHOOL ACTIVITIES

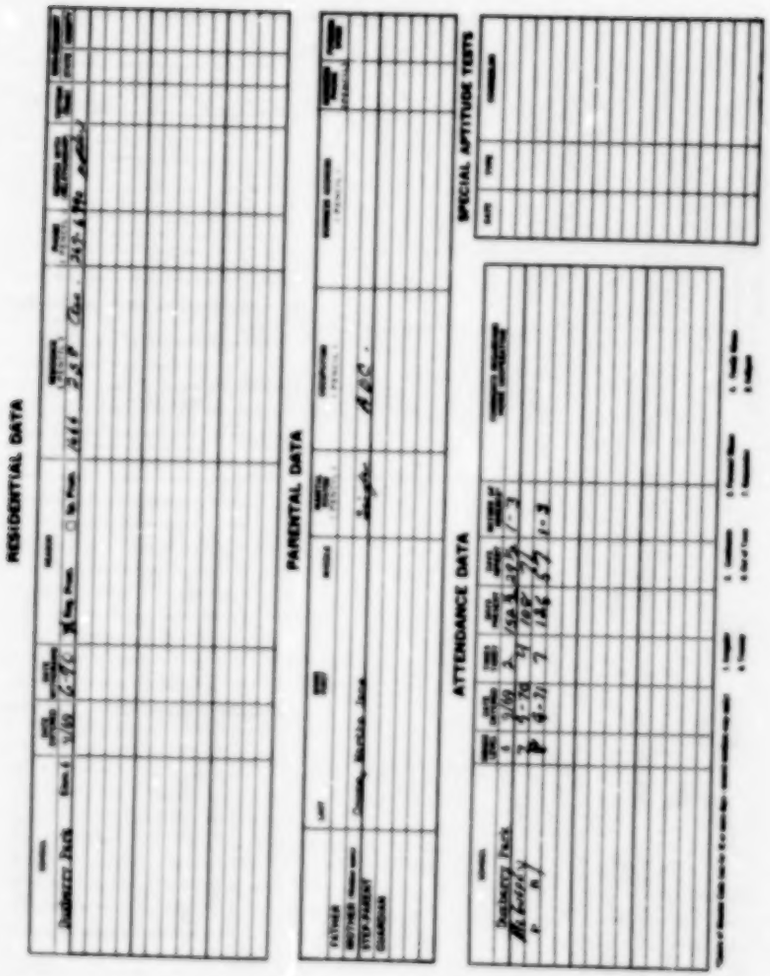
DATE

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	HOURS*	REMARKS

* Hours per week if part-time; hours per day if vacation

Exhibit 2 B continued



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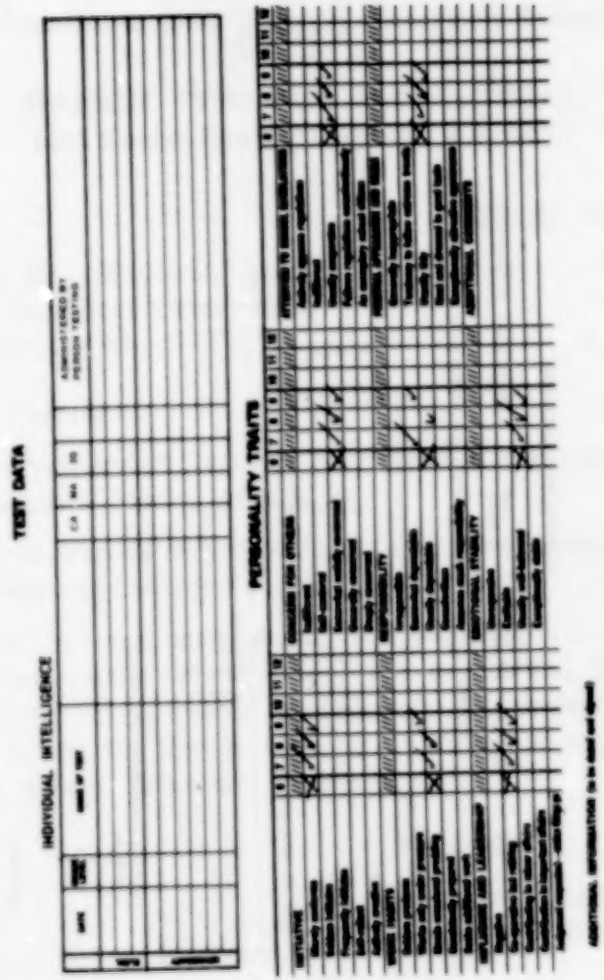


Exhibit 2 B continued

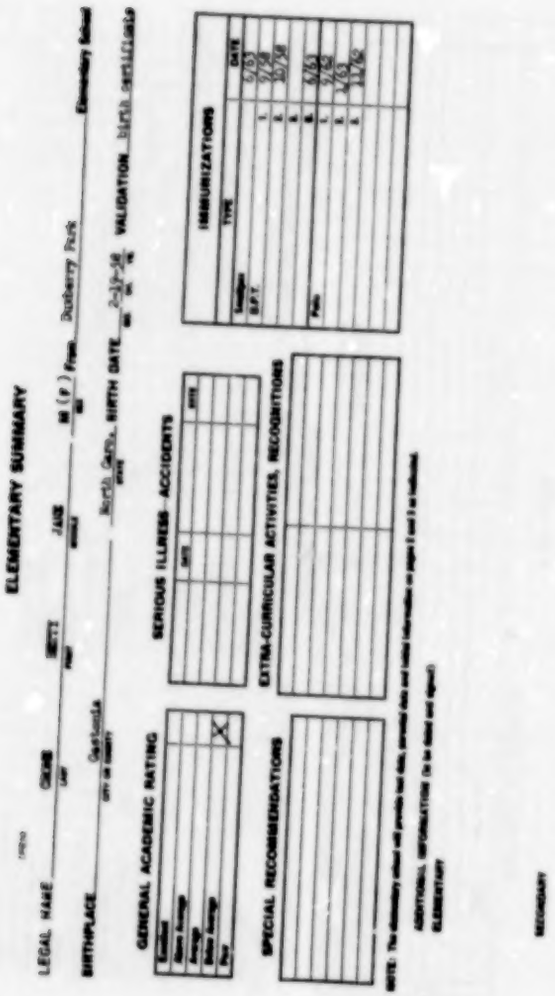


EXHIBIT 3 A

Superintendent of Schools - Harold H. Eibling

MARION - FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 10, 1971

Mr. & Mrs. William Young
3351 Southfield Drive, East
Columbus, Ohio

Dear Parents:

I have suspended Deborah from Marion-Franklin High School until Friday, March 19.

Deborah was extremely defiant, and disrespectful with the assistant Principal today.

During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

RICHARD KOLLMER
Assistant Principal

EXHIBIT 3 B

Superintendent of Schools - Harold H. Eibling

MARION - FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 19, 1971

Mr. & Mrs. William H. Young, Jr.
3351 Southfield Drive, East
Columbus, Ohio

Dear Parents:

I have suspended Deborah Fox from Marion-Franklin High School until Monday, March 29, or until contacted by Mr. Robert Carter or his representative regarding your daughter's school placement.

During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

RICHARD KOLLMER
Assistant Principal

EXHIBIT 3 C

March 23, 1971

Mr. Richard Stinemetz, Prin.
South High School

Dear Mr. Stinemetz:

Approval is given for Deborah K. Fox, 3351 Southfield Drive, to enroll at South High School.

Miss Howard is working with Deborah and is very cooperative and interested in Deborah's improvement.

Any questions pertaining to this case should be referred to me or Miss Howard.

Sincerely,

H. M. WILLIAMS, *Director*
Pupil Personnel

EXHIBIT 3 D

(Reconstructed for Clarity in Printing)

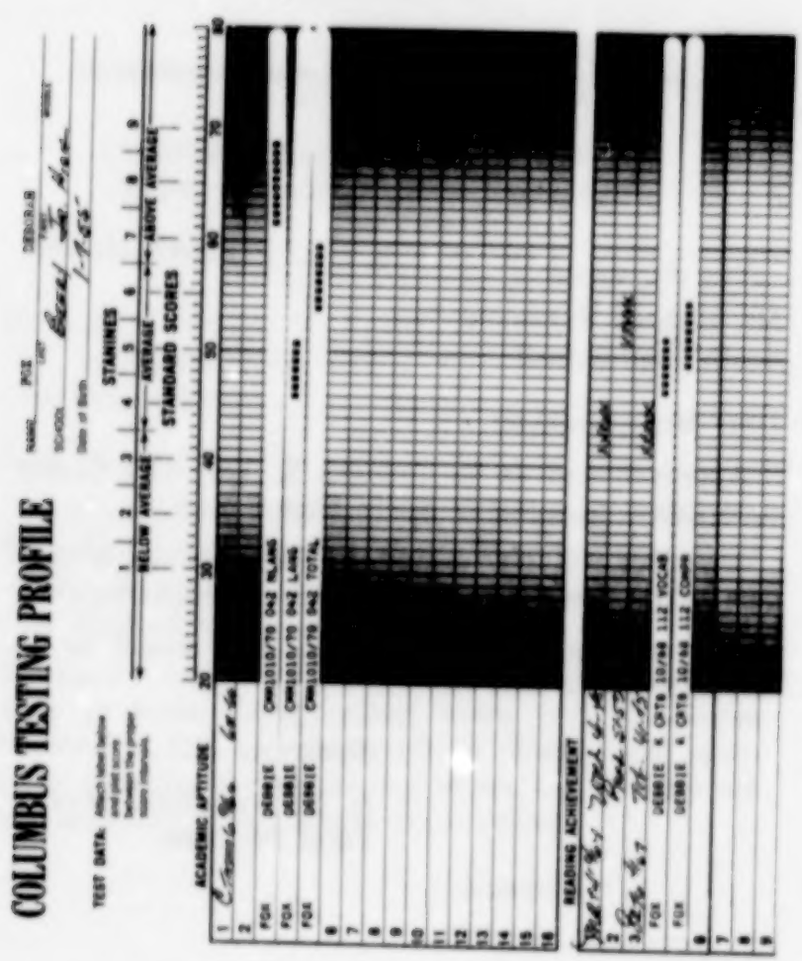
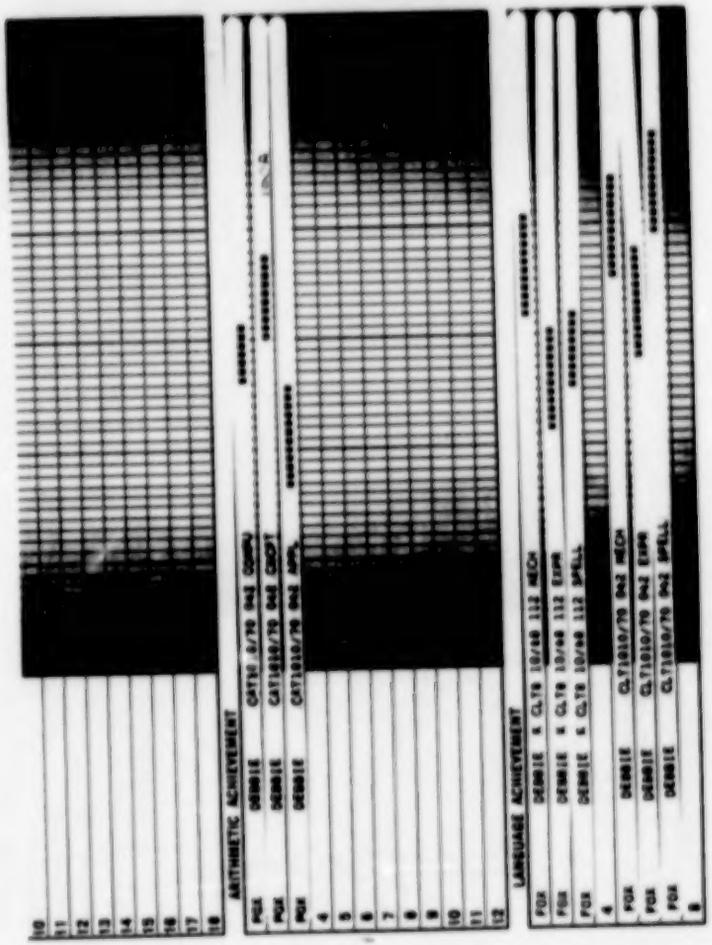


Exhibit 3 D continued

(Reconstructed for Clarity in Printing)



COLUMBUS TESTING PROFILE

TEST DATA: Attach label below and plot score between the proper score intervals.

STANINES

1 2 3 4 5 6 7 8 9

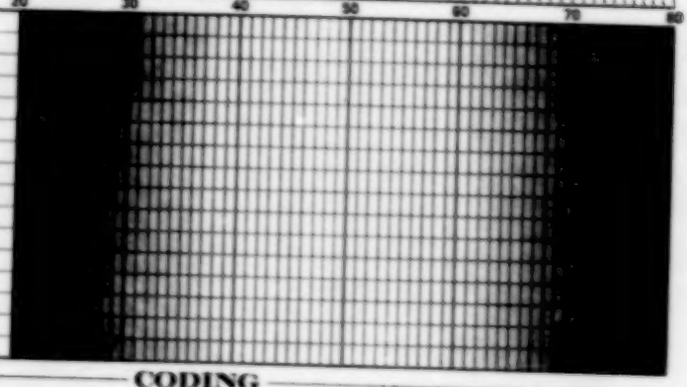
BELOW AVERAGE — AVERAGE — ABOVE AVERAGE

STANDARD SCORES

20 30 40 50 60 70 80

OTHER TESTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16



CODING

MRR Metropolitan Readiness
LCR Lee - Clark Readiness
ASR American School Readiness
KA Kuhlman-Anderson Intelligence
CTMM California Mental Maturity
O Otis Intelligence

MR Metropolitan Reading
SR Stanford Reading
CRT California Reading Test
HN Henmon - Nelson Intelligence

SA Stanford Arithmetic
CAT California Arithmetic Test
MA Metropolitan Arithmetic
OST Otis Survey Tests
CLT California Language Test

Code to be followed to number to indicate grade at which test is given i.e. MR - Henmon - Nelson given in the 4.5 grade

Exhibit 3 D continued

CUMULATIVE PERSONAL RECORD

Columbus, Ohio, Public Schools

NAME PCK TERRAH KAT M (F)

HOME ROOM 121 204 302 305 306

GRADE LEVEL 7 8 9 10 11 12

PROMOTED FROM Clarfield ELEMENTARY SCHOOL—DATE

GRADUATED FROM Parsons JUNIOR HIGH SCHOOL—DATE 6 7 8

GRADUATED FROM SENIOR HIGH SCHOOL—DATE

IN CASE OF EMERGENCY NOTIFY:

NAME REGINA JONES

ADDRESS ALVIN CRYER PHONE 224-24

NAME

ADDRESS PHONE

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	Number	Hours

OUT-OF-SCHOOL ACTIVITIES

DATE	

Exhibit 3 D continued

Exhibit 3 D continued

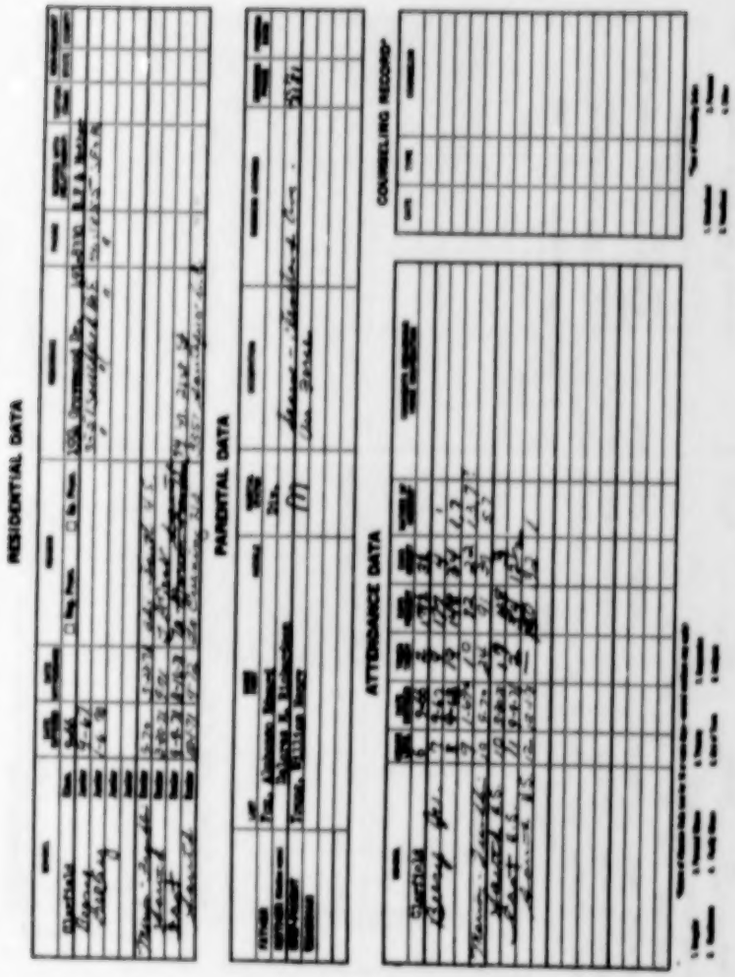


Exhibit 3 D continued

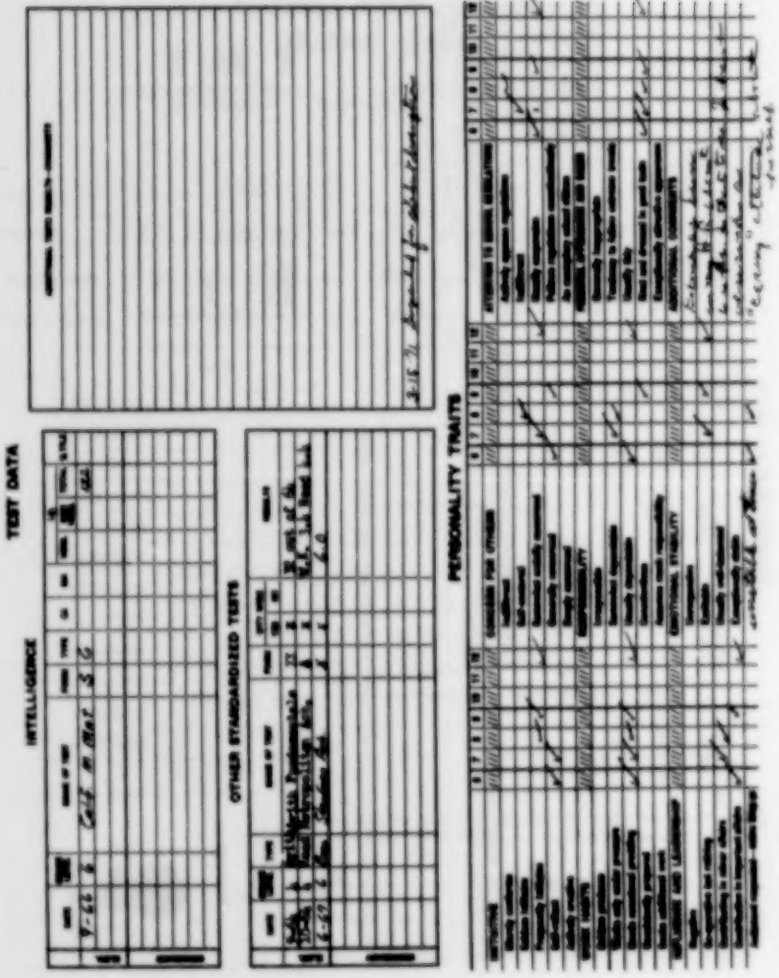


Exhibit 3 D continued

ELEMENTARY SUMMARY

NAME _____ SEX _____ AGE _____ IQ (If) From _____ CLASSIFIED _____ Elementary School

BIRTHPLACE _____ BIRTH DATE _____ VALIDATION _____

HEALTH DATA

SERIOUS ILLNESS—ACCIDENTS

IMMUNIZATIONS

SPECIAL APTITUDES

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

GENERAL ACADEMIC RATING

SPECIAL RECOMMENDATIONS

NOTE: The elementary school will provide the above, personal data and school information on pages 1 and 2 to indicate ADDITIONAL INFORMATION (to be added and signed) ELEMENTARY

SECONDARY

Exhibit 3 D continued

COLUMBUS PUBLIC SCHOOLS

ACADEMIC RECORD

South SENIOR HIGH SCHOOL
(To be Assigned)

12-305

4-23

NAME Fay Deborah Kay HOME ROOM

ADDRESS 3351 Southfield Dr East PHONE 491-5155

RESIDES WITH Wm + Rebecca Young RELATIONSHIP S/father + mother

DATE OF BIRTH 1-7-55 DATE ENTERED 12-1-71

	DATE	REASON
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

PHOTO

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME _____

ADDRESS _____

PHONE _____

Exhibit 3 D continued

South HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME Fox Deborah Kay ADDRESS 3351 Southfield Dr

SEX F DATE OF BIRTH 1 2 55 PLACE OF BIRTH Cols Ohio

PARENT OR GUARDIAN Wm & Debora Young

DATE ENTERED Dec. 1, 1971 ADMITTED FROM East H.S.

Is supposed to grad. June 1972 Cols Ohio

☐ WAS NOT GRADUATED ☐ WAS GRADUATED DATE OF DIPLOMA

NUMBER IN GRADUATING CLASS 480 RANK IN CLASS ??? AS COMPUTED 1/7?

POINT AVERAGE 2.087 AS COMPUTED 1/7? L.B. Fessler PRINCIPAL

SUBJECT	GRADE	CREDIT
ENGLISH 9	A	1.
ENGLISH 10	B	1.
ALGEBRA I (8)	C	D
ALGEBRA II	D	1.
GEOMETRY PLANE & SOLID	D	1.
GENERAL SCIENCE	C	1.
BIOLOGY	D	1.
GEOGRAPHY	B	1.
FRENCH I 8?2	C	D
	D	1.
	C	1.

Exhibit 3 D continued

SUBJECT	GRADE	CREDIT
BUSINESS ARITHMETIC	A-10	.5
TYPING I	A	.5
PHYSICAL EDUCATION I	B	.5
	C	.5
CLOTHING	S-Unc. 11 D	.5

HEALTH EDUCATION 9th B .5

SAFETY EDUCATION

HOME ECONOMICS OBSERVATIONS, ETC.

Write in the specific subject area and the level of work (I, II, etc.)

This high school is accredited by the North Central Association of Colleges and Secondary Schools

Graduation requirements: 18 units of credit plus Health and Physical Education

Length of class period: minimum of 40 minutes

GRADE LEVEL: 9—Freshman, 10—Sophomore, 11—Junior, 12—Senior

SUBJECT	GRADE	CREDIT
CLOTHING	S-Unc. 11 D	.5

9th 11.5

SCHOOL LEAVING ☐ 9th ☐ 10th ☐ 11th ☐ 12th

EXHIBIT 4 A

Superintendent of Schools - Harold H. Eibling

MARION - FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 16, 1971

Mrs. Katherine Cooper
1576 Koebel Road
Columbus, Ohio

Dear Mrs. Cooper:

I have suspended Susan, your daughter, from Marion-Franklin High School until Thursday, March 25. I will reserve 11:00 a.m. on this day for a conference with you and your daughter.

Susan was involved in the disturbance at school on Monday, March 15 at which time she showed a lack of respect for the principal.

During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

OSCAR R. GILL
Assistant Principal

EXHIBIT 4 B

COLUMBUS PUBLIC SCHOOLS
ACADEMIC RECORD

Marion-Franklin SENIOR HIGH SCHOOL
(To be Retained)

69-70 10-B
70-71 10-B
71-72 10-B

NAME Cooper Susan Carol HOME ROOM

ADDRESS 1576 Koebel Rd. PHONE 491-2665
497-9495

RESIDES WITH Barbara E. Kathleen RELATIONSHIP Parent

	DATE	REASON
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

TRANSCRIPT RECORD

DATE	SENT TO	COMMENTS
10-27-70	Ohio Wesleyan Upward Bound	
2-27-71	" "	
8-9-71	Ohio U.	
"	Kent State U.	
1-4-72	2nd U. Northwestern	
1-26-72	Bowling Green State U.	
2-10-72	Ohio Wesleyan Upward Bound	

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME

ADDRESS

PHONE

Exhibit 4 B continued

Thomas Jefferson HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME: Cooper, Susan C. ADDRESS: 1224 Taylor St.

SEX: F DATE OF BIRTH: 5-26-54 PLACE OF BIRTH: Chillicothe, Ohio

PARENT OR GUARDIAN: Edward E. & K. Horn

DATE ENTERED: 9-4-69 ADMITTED FROM: Westland H.S.

☐ WAS NOT GRADUATED ☑ WAS GRADUATED DATE OF DIPLOMA: 6-11-72

NUMBER IN GRADUATING CLASS: 328 RANK IN CLASS: 183 AS COMPUTED: 1-72

POINT AVERAGE: 1.933 AS COMPUTED: 1-72 Philip S. Fulton PRINCIPAL

SUBJECT	GRADE 9	GRADE 10	GRADE 11	GRADE 12			CREDIT
LANGUAGE ARTS							
English I (9)	S 90	1-69	C				1
II (10)	S 90	2-70	C				1
III (11)	S 90	1-71	C				1
English Literature & Composition	S 90	1-72	C				1
Conf. Literature & Composition	S 90						
Business English	S 90						
Dramatics (9)	S 90						
Journalism	S 90						
Speech I (Public Skills and Relations)	S 90						
Speech II (Dramatics)	S 90						
SOCIAL STUDIES							
World History	S 90	1-69	C				1
American History	S 90	1-70	C				1
Principles of Democracy	S 90	1-71	C				1
Current History	S 90						
	S 90						
Geography	S 90						
	S 90						

SUBJECT	GRADE 9	GRADE 10	GRADE 11	GRADE 12			CREDIT
MATHEMATICS							
General Mathematics	S 90						
Shop Mathematics	S 90	1-69	C				1
Algebra I	S 90	1-70	B				1
Algebra II	S 90						
Geometry (Plane & Solid)	S 90						
Trigonometry	S 90						
Analytical Geometry	S 90						
Advanced Mathematics V	S 90						
Senior Review Arithmetic	S 90						
SCIENCE							
General Science I	S 90						
Physical Science II	S 90						
Biology I	S 90	1-70	C				1
Biology II	S 90	1-71	B				1
Chemistry	S 90						
Physics	S 90						
FOREIGN LANGUAGE							
French I	S 90						
II	S 90						
III	S 90						
IV	S 90						
V	S 90						
German I	S 90						
II	S 90						
III	S 90						
IV	S 90						
V	S 90						
Latin I	S 90						
II	S 90						
III	S 90						

Write in for lesson title between of the months. Lower Class 7 repeats

Exhibit 4 B continued

SUBJECT	GRADE 9	GRADE 10	GRADE 11	GRADE 12			CREDIT
Latin IV	S 90						
V	S 90						
Russian I	S 90						
II	S 90						
III	S 90						
IV	S 90						
V	S 90						
Spanish I	S 90	1-69	C				1
II	S 90	1-70	C				1
III	S 90	1-71	C				1
IV	S 90						
V	S 90						
BUSINESS EDUCATION							
General Business	S 90						
Business Arithmetic	S 90						
Typing I	S 90	1-70	D				.5
II	S 90						
III	S 90						
Shorthand I	S 90						
II	S 90						
Bookkeeping I	S 90						
II	S 90						
Business Law	S 90						
Computer Economics	S 90						
Business Machines	S 90						
Office Practice	S 90						
General Sales	S 90						
Retail Sales	S 90						
Distributive Education	S 90						
ART I	S 90	1-69	C				.5
II (Adv.)	S 90	1-70	B				.5
III							
IV							
PHYSICAL EDUCATION I	S 90	1-69	C				.5
II	S 90	1-70	C				.5
III	S 90	1-71	C				.5
IV							
HEALTH EDUCATION	S 90	1-70	C				.5
SAFETY EDUCATION							

SUBJECT	GRADE 9	GRADE 10	GRADE 11	GRADE 12			CREDIT
DRIVER EDUCATION	S 90	1-70	C				.5
VOCAL MUSIC							
INSTRUMENTAL MUSIC							
VOCATIONAL SUBJECTS							

HOME ECONOMICS - INDUSTRIAL ARTS

Write in the specific subject area and the level of work (I, II, etc.)

SUBJECT	GRADE 9	GRADE 10	GRADE 11	GRADE 12			CREDIT
Example: Wood I							
Mechanical Drawing I	S 90	1-69	1-72	D			1

This high school is accredited by the North Central Association of Colleges and Secondary Schools.

Graduation requirements: 16 units of credit plus Health and Physical Education.

Length of class period: minimum of 40 minutes.

GRADE CODE: A - Excellent; B - Good; C - Average; D - Poor; F - Failing

Date	Total Credits	Teacher	Class Rank
6-69	4.5	Mr. Thompson M.S.	
6-70	8	Dr. Allen	412-B
6-71	11.5	Mr. Williams	218-B
6-72	16.5	Jones	183-B

SLOW LEARNERS ☐ No ☐ Yes 7th Yr. 8th Yr. ☐ Yes

EXHIBIT 4 B continued

March 16, 1971

Mrs. Katherine Cooper
1576 Koebel Road
Columbus, Ohio

Dear Mrs. Cooper:

I have suspended Susan, your daughter, from Marion-Franklin High School until Thursday, March 25. I will reserve 11:00 a.m .on this day for a conference with you and your daughter.

Susan was involved in the disturbance at school on Monday, March 15 at which time she showed a lack of respect for the principal.

During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

OSCAR R. GILL
Assistant Principal

CC: Mr. C. L. Dumaree
Mr. H. M. Williams
Mr. Philip Fulton
Mr. Richard Kollmer

Exhibit 4 B continued

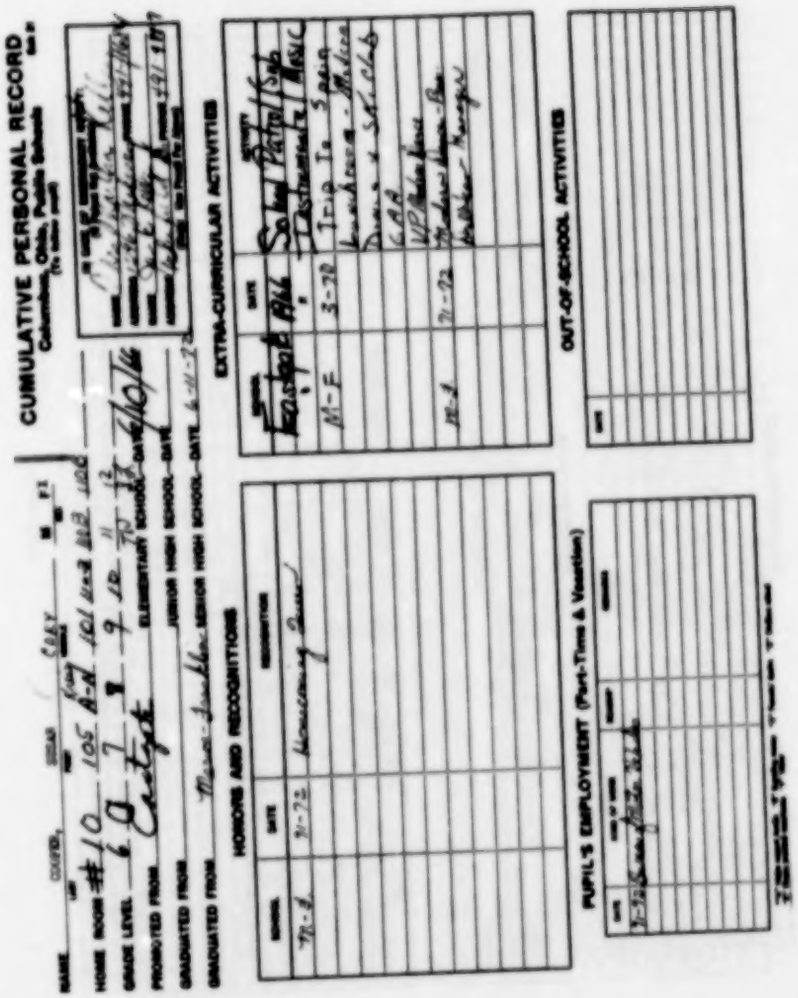


Exhibit 4 B continued

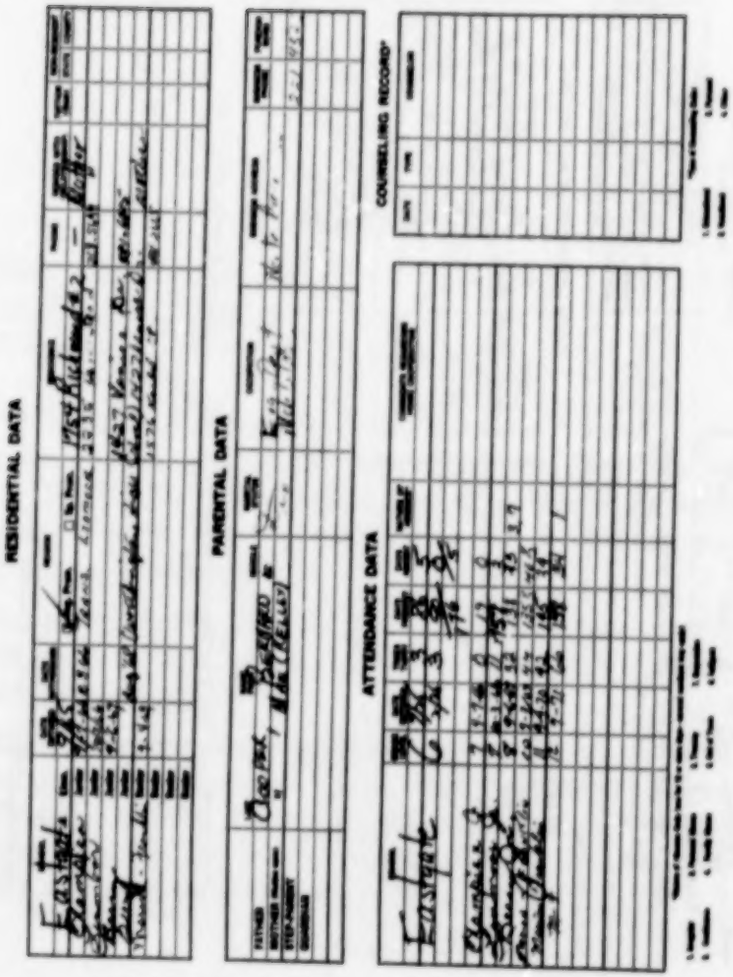


Exhibit 4 B continued

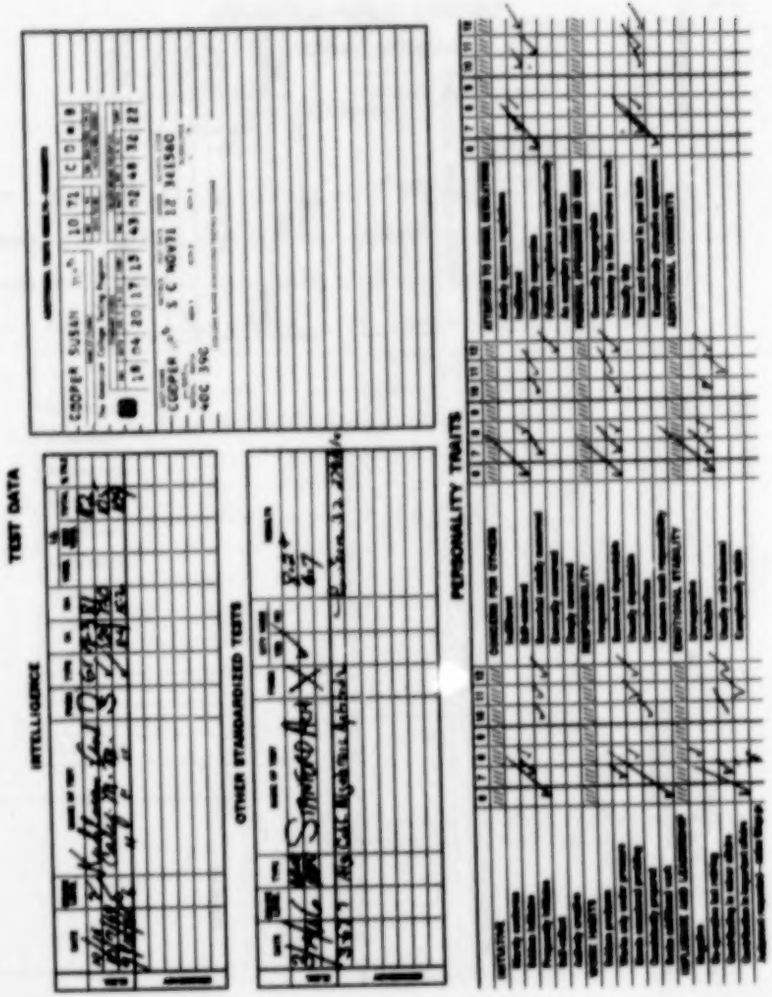


Exhibit 4 B continued

EXHIBIT 5 B

COLUMBUS PUBLIC SCHOOLS

ACADEMIC RECORD

Eastmoor SENIOR HIGH SCHOOL
(To be Published)

NAME Smith Carl Matthew HOME ROOM

ADDRESS 2295 Vada Street PHONE 279 9166

RESIDES WITH James - Vida Smith RELATIONSHIP P

DATE OF BIRTH DATE ENTERED

	DATE	REASON
WITHDRAWN	3/31/71	Overage
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

PHOTO

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME

ADDRESS

PHONE

Exhibit 5 B continued

Evening HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME: Smith Carl Matthew ADDRESS

SEX: M DATE OF BIRTH: 11-10-53 PLACE OF BIRTH: Columbus Ohio

PARENT OR GUARDIAN

DATE ENTERED: April 1, 1970 ADMITTED FROM: West High

☐ WAS NOT GRADUATED ☒ WAS GRADUATED DATE OF DIPLOMA: 6-14-72

NUMBER IN GRADUATING CLASS: 109 RANK IN CLASS: 87 AS COMPUTED: 5-3-72

POINT AVERAGE: 1.0257 AS COMPUTED: 2-16-71 Jim Dawson PRINCIPAL

SUBJECT	GRADE 9	GRADE 10	GRADE 11	GRADE 12	CREDIT
LANGUAGE ARTS					
English I			Lab D		1
II			Lab F, Lab D		1
Basic Lit			3/72 B		
English III				3/72 C, 6/72 C	1
Eng [10] II		3/72 C		6/72 D	1
SOCIAL STUDIES					
World History			Lab F, 3/72 D		1
American History			Lab D		1
Principles of Democracy			3/72 C	6/72 C	1.0
Geography			3/72 C	6/72 D	.5
MATHEMATICS					
Math II			5/72 C		1
SCIENCE					
General Science I			Lab D		1
Physical Science II			3/72 C		1
FOREIGN LANGUAGE					
French I					

Exhibit 5 B continued

SUBJECT	GRADE 9	GRADE 10	GRADE 11	GRADE 12	CREDIT
Lang. Arts I					
Reading I					
Spanish I			Lab D, 3/72 D		1
II			3/72 D		1
BUSINESS EDUCATION					
General Business					
Business Arithmetic					
Typing I			Lab F, 3/72 C		.5
Shorthand I					
Bookkeeping I					
Business Law					
Consumer Economics					
Business Machines					
Office Practice					
General Sales			3/72 C		1
Retail Sales					
Distributive Education					
ART I					
II					
III					
PHYSICAL EDUCATION I			Lab B		.5
II			Lab E		.5
III			3/72 D		.5
IV			3/72 C		.5
HEALTH EDUCATION			3/72 C	6/72 P	1/2
SAFETY EDUCATION					

SUBJECT	GRADE 9	GRADE 10	GRADE 11	GRADE 12	CREDIT
Drafting	5		Lab D		.5
Mechanical Drawing	5		Lab F		.5

DATE	TERM CREDIT	TEACHER	NAME WHEN
6/70	5.5		
3/1/71	10.5		
3/31	12.5		
6/72	14.0	Carl Wright	

Exhibit 5 B continued

TRANSCRIPT RECORD

DATE	SENT TO	COMMENTS
10-29-71	Evening High School	

Exhibit 5 B continued

CUMULATIVE PERSONAL RECORD
Columbus, Ohio, Public Schools

NAME _____ BOY ☐ GIRL ☐ CARD _____ SECTION _____

HOME ROOM 23rd 234 162

GRADE LEVEL 7 10 11

PROMOTED FROM ELEMENTARY SCHOOL—DATE 6-65

GRADUATED FROM JUNIOR HIGH SCHOOL—DATE

GRADUATED FROM SENIOR HIGH SCHOOL—DATE

WEST MOUND STREET

IN CASE OF EMERGENCY NOTIFY

NAME _____ PHONE _____

ADDRESS _____

NAME _____ PHONE _____

ADDRESS _____

Class 1 No Detail Per Man

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION
Dentral	6-70	Merit

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY
Central	6-70	Merit

OUT-OF-SCHOOL ACTIVITIES

DATE

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	HOURS	WAGES

Exhibit 5 B continued

RESIDENTIAL DATA

SCHOOL		DATE ENTERED	DATE WITHDREW	REASON	RESIDENCE	PHONE	GUARDIAN WITH RELATIONSHIP	TUITION PAID	NON-RESIDENT STATE	NON-RESIDENT DISTRICT
WEST MOUND STREET	Elem.	3/66	6/66	☑ Reg. Prom. ☐ Sp. Prom.	2295 Valle	274-9966	parents			
HILLTONIA	Junior	1-9-69								
	Junior									
	Junior									
	Junior									
Central	Senior	70								
	Senior									
	Senior									

PARENTAL DATA

	LAST	FIRST	MIDDLE	MARITAL STATUS	OCCUPATION	BUSINESS ADDRESS	BUSINESS PHONE	RESIDENCE PHONE
FATHER	Smith,	James	R.	M	Inspector	City		
MOTHER (Maiden name:)	Saunders,	Viola		M	supervisor	JHC		
STEP-PARENT								
GUARDIAN								

ATTENDANCE DATA

SCHOOL	SCHOOL YEAR	DAYS ABSENT	TIMES TARDY	DAYS PRESENT	NUMBER OF SCHOOLS	TEACHER'S REMARKS (Other Comments)
WEST MOUND STREET	6	3/66	2	132	30	
HILLTONIA	7	1-9-69	2	104	154	
HILLTONIA	8	9-2-69	8	121	9	
"	9	8-67	5	157.5	23.5	
Talent	10	9-67	2	65	24	
Tiger	10	1-68	6	20.12	6230	5 28
Tiger	11	9-69	15	70.12	19.0	
Central	11	9-70	2	108	19	7321 Chicago
Central	12	9-70				

1. English 2. Personal Hygiene 3. Physics 4. Composition
5. Mathematics 6. Study Habits 7. Use of Time 8. Religion

COUNSELING RECORD*

DATE	TYPE	COUNSELOR

Exhibit 5 B continued

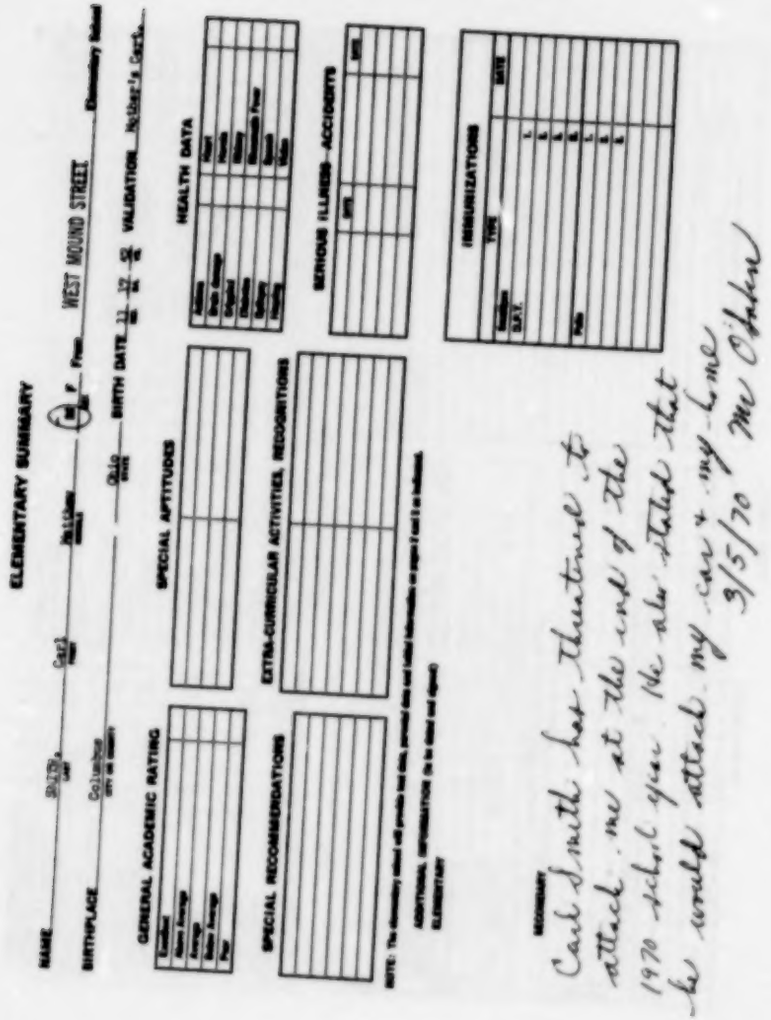


EXHIBIT 6 A

Superintendent of Schools - Harold H. Eibling

MARION - FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 16, 1971

Mr. & Mrs. Floyd Sutton
2949 Fairwood Avenue
Columbus, Ohio

Dear Parents:

I have suspended Rudolph, your son, from Marion-Franklin High School until Thursday, March 25. The Pupil Personnel Department will notify you concerning a disposition of this case.

Rudolph was involved in a disturbance at school on Monday, March 15. He defiantly refused to follow the directions of the principal. Furthermore, he created an explosive situation.

During the suspension period, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

OSCAR R. GILL
Assistant Principal

EXHIBIT 6 B

March 23, 1971

Mr. Richard Stinemetz, Prin.
South High School

Dear Mr. Stinemetz:

Approval is given for Rudolph Sutton, 2949 Fairwood Ave., to enroll at South High School for the balance of the 1970-71 school year. (Adjustment)

Please call if you have any questions.

Sincerely,

H. M. WILLIAMS, *Director*
Pupil Personnel

EXHIBIT 6 C

COLUMBUS PUBLIC SCHOOLS
ACADEMIC RECORD
South SENIOR HIGH SCHOOL
(To be Retained)

NAME Sutton (Last) Rudolph (First) Earl (Middle) HOME ROOM 211
ADDRESS [illegible] PHONE 491-2379
RESIDES WITH Floyd L. & Juanita RELATIONSHIP Father & mother

	DATE	REASON
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

TRANSCRIPT RECORD

DATE	SENT TO	COMMENTS

PHOTO

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME
ADDRESS
PHONE

Exhibit 6 C continued

South HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME: Sexton Rudolph Earl ADDRESS:

SEX: M DATE OF BIRTH: 12 27 54 PLACE OF BIRTH: Knox County, Indiana

PARENT OR GUARDIAN: Floyd V Jeanine

DATE ENTERED: 9-29-71 ADMITTED FROM: Marion-Franklin

☐ WAS NOT GRADUATED ☒ WAS GRADUATED DATE OF DIPLOMA: June 6, 1972 REGULAR

NUMBER IN GRADUATING CLASS: RANK IN CLASS: AS COMPUTED:

POINT AVERAGE: AS COMPUTED: R B Steinmetz PRINCIPAL

SUBJECT	Year in School	Semester	Credit Value	Mark	Mark			Credit Earned
LANGUAGE ARTS								
English I (9)	9	1	.40	4.68	B			.4
II (10)	10	1	.40	4.65	B			.4
III (11)	11	1	.40	4.70	C			.4
English Literature & Composition	12	1	.40	5.00	A			.4
Comp. Literature & Composition								
Business English								
Dramatics (9)								
Journalism								
Speech I (Public Rels and Television)								
Speech II (Dramatics)								
SOCIAL STUDIES								
World History	10	1	.40	4.69	B			.4
American History	11	1	.40	4.70	C			.4
Principles of Democracy	12	1	.40	W.D.	D			.4
Current History								
Geography								
MATHEMATICS								
General Mathematics	12	1	.40	4.68	C			.4
Shop Mathematics								
Algebra I	10	1	.40	4.69	B			.4
Algebra II				W.D.	D			.4
Geometry (Plane & Solid)				4.70	C			.4
Trigonometry								
Analytical Geometry								
Advanced Mathematics V								
Senior Review Arithmetic								
SCIENCE								
General Science I	12	1	.40	4.68	B			.4
Physical Science II								
Biology I	10	1	.40	4.69	C			.4
Biology II								
Chemistry								
Physics								
FOREIGN LANGUAGE								
French I								
II								
III								
IV								
V								
German I								
II								
III								
IV								
V								
Latin I								
II								
III								

3-15-71 Suspended for school disruption

Exhibit 6 C continued

SUBJECT	Year in School	Semester	Credit Value	Mark	Mark			Credit Earned
Latin IV								
V								
Russian I								
II								
III								
IV								
V								
Spanish I	9	1	.40	4.68	C			.4
II								
III								
IV								
V								
BUSINESS EDUCATION								
General Business								
Business Arithmetic								
Typing I	10	1	.40	4.67	B			.4
II								
III								
Shorthand I								
II								
Bookkeeping I								
II								
Business Law								
Consumer Economics								
Business Mathematics								
Office Practice								
General Sales								
Retail Sales								
Distributive Education								
ART I								
II								
III								
IV								
PHYSICAL EDUCATION I	9	1	.40	4.68	B			.2
II	10	1	.40	4.67	B			.2
III	11	1	.40	4.70	C			.2
IV								
HEALTH EDUCATION	9	1	.40	4.70	C			.4
SAFETY EDUCATION								

HOME ECONOMICS—INDUSTRIAL ARTS

Write in the specific subject area and the level of work (I, II, etc.)

SUBJECT AREA	Year in School	Semester	Credit Value	Mark	Mark			Credit Earned
Example: Wood	1							
Drafting		1	.40	4.70	B			.4
Electricity		1	.40	4.70	C			.4
Electronics				W.D.	D			.2

SUBJECT	Year in School	Semester	Credit Value	Mark	Mark			Credit Earned
DRIVER EDUCATION				5.00	B			.8
VOCAL MUSIC								
INSTRUMENTAL MUSIC	9		.40	4.68	B			.4
VOCATIONAL SUBJECTS								

This high school is accredited by the North Central Association of Colleges and Secondary Schools.

Graduation requirements: 16 units of credit plus Health and Physical Education.

Length of class period: minimum of 40 minutes.

GRADE CODE: A—Excellent; B—Good; C—Average; D—Poor; F—Failing

Date	Year Grade	Name	Home Room
6-70	10-9	Maroon Franklin	

SLOW LEARNERS ☐ 9th ☐ 10th ☐ 11th ☐ 12th

NAME SUTTON, FLOYD RUFUS — RACE — SEX M F

CUMULATIVE PERSONAL RECORD

Columbus, Ohio, Public Schools

(To follow pupil)

HOME ROOM 1200 4-5 6-2 1556 115 211

GRADE LEVEL 7 8 9 10 (Boys) 11 (Girls) 12

PROMOTED FROM Watkins

GRADUATED FROM

ELEMENTARY SCHOOL—DATE 6-11-65

JUNIOR HIGH SCHOOL—DATE 6-68

SENIOR HIGH SCHOOL—DATE

IN CASE OF EMERGENCY NOTIFY: (If Parent Not Available)

NAME Mrs Dorothy Broomfield PHONE CE 8-7836

ADDRESS 333 Nelson Av.

NAME

ADDRESS PHONE

(Note: Use Pencil For Above)

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION
Mason Frank	68-69	—
Mason Frank	69-76	

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY
Beery	66-67	Baseball
Beery	66-67	Basketball
ECCEC	67-68	BAND
Mason Frank	68-69	Football Rep Letter
Mason Frank	69-76	[illegible]

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	REASON	REMARKS

OUT-OF-SCHOOL ACTIVITIES

DATE	

Exhibit 6 C continued

246

RESIDENTIAL DATA

SCHOOL		DATE ENTERED	DATE WITHDRAWN	REASON	ADDRESS	PHONE	NAME AND ADDRESS OF PARENT OR GUARDIAN	TRANSFER CREDITS	GRADUATION DATE (YEAR)	GRADUATION DATE (MONTH)
Watkins	Elem.	6-11-68		☐ Reg. Prom. ☐ Sp. Prom.	2069 Fairwood Ave.	AS1-2109	Parents			
	Junior									
	Junior									
	Junior									
Mason Frank Local	Junior	8-69	8-2272	Local H.S.	Daytime					
	Junior	9-2272								
	Junior									
	Junior									

PARENTAL DATA

	NAME	RACE	RELIGION	MARITAL STATUS	OCCUPATION	BUSINESS ADDRESS	TELEPHONE	HIGHEST GRADE
FATHER	Sutton, Floyd Rufus			M	Chauffeur	2120 [illegible]		
MOTHER (Name used)	Long, Juanita -			M	Domicile			
STEP-PARENT								
GUARDIAN								

ATTENDANCE DATA

SCHOOL	GRADE	DAYS ABSENCE	TIMES TARDY	DAYS ATTENDANCE	DAYS ENROLLED	NATURE OF ABSENCE	TEACHER'S OBSERVATIONS AND COMMENTS
WATKINS	8	[illegible]	0	123	3		
Beery Jr.	7	761	0	141	0	—	
Beery Jr.	8	946	0	179	23	—	
Beery Jr. H.	9	940	2	132	5		
Mason Frank H.	10	[illegible]	5	176	52		
Mason Frank H.	11	9-69	1	179	3	3	
	12	970	12	117	10		
Local	12	2272					

COUNSELING RECORD*

DATE	TYPE	REMARKS

Exhibit 6 C continued

247

Exhibit 6 C continued

TEST DATA

INTELLIGENCE

DATE	GRADE LEVEL	NAME OF TEST	FORM	TYPE	CA	MA	IQ VERBAL	IQ PERF. NON-VERB.	TOTAL	% TILE
1-16-64	5	Calif. Mental Mat.	S		12-1	10-4	78	91	85	
4-7-65	6	Stanford-Binet	M		13-3	9-6			72	
4-7-65	6	Peabody Picture Vocabulary			13-3				86	
12-66	8	Goodenough Harris	M	66					87	

OTHER STANDARDIZED TESTS

DATE	GRADE LEVEL	TYPE	NAME OF TEST	FORM	CITY WIDE YES	CITY WIDE NO	RESULTS
4-1-65	6	Read.	Stanford Achieve.	X	X		Spel Lang 4.6 Tot Ave 6.7
4-1-65	6	Arith.	" "	X	X		
4-66	7	Read	Iowa Calif	A		V	Voc 5.7 Read 5.6 Lang 5.0
11-66	8	Arith		A	V		Prob Solv 5.0 Comp 5.0
12-66	8	Lang		M	V		Prob Solv 7.3 Comp 7.3

ADDITIONAL TESTS RESULTS—COMMENTS

3-15-71 Needs test for school description

PERSONALITY TRAITS

	6	7	8	9	10	11	12
INITIATIVE							
Merely endorses							
Seldom initiates							
Frequently initiates	✓	✓	✓	✓	✓	✓	✓
Self-reliant							
Actively creative							
WORK HABITS							
Seldom produces							
Works only under pressure							
Needs emotional prodding							
Considerably prepared	✓	✓	✓	✓			
Seeks additional work							
INFLUENCE AND LEADERSHIP							
Negative							
Co-operative but retiring							
Contributing in minor efforts	✓	✓	✓	✓	✓	✓	✓
Contributes in important efforts							
Judgment requested—takes things p							

	6	7	8	9	10	11	12
CONCERN FOR OTHERS							
Indifferent							
Self-centered							
Somewhat widely concerned							
Generally concerned	✓	✓	✓				✓
Deeply concerned							
RESPONSIBILITY							
Irresponsible							
Somewhat dependable							
Usually dependable		✓	✓	✓	✓	✓	✓
Conscientious							
Assumes much responsibility							
EMOTIONAL STABILITY							
Unresponsive							
Excitable							
Usually well-balanced	✓	✓	✓	✓	✓	✓	✓
Exceptionally stable							

	6	7	8	9	10	11	12
ATTITUDES TO SCHOOL REGULATIONS							
Actively opposes regulations							
Indifferent							
Usually cooperates	✓	✓	✓	✓	✓	✓	✓
Follows regulations conscientiously							
An exemplary school citizen							
PERSONAL APPEARANCE AND DRESS							
Generally inappropriate							
Tendency to follow extreme trends							
Usually tidy							
Neat and dressed in good taste	✓	✓	✓	✓			
Exceptionally attractive appearance							
ADDITIONAL COMMENTS							

Exhibit 6 C continued

ELEMENTARY SUMMARY

NAME SUTTON, RANDOLPH RUEL M If From Watkins Elementary School
(LAST / FIRST / MIDDLE / INIT)

BIRTHPLACE Terre Haute (CITY OR COUNTY) Indiana (STATE) BIRTH DATE 12 29 51 (MO. / DA. / YR.) VALIDATION B.C.

GENERAL ACADEMIC RATING

Excellent	
Above Average	
Average	
Below Average	✓
Poor	

SPECIAL APTITUDES

HEALTH DATA

Asthma		Heart	
Brain damage		Hernia	
Crippled		Kidney	
Diabetes		Rheumatic Fever	
Epilepsy		Speech	
Hearing		Vision	

SPECIAL RECOMMENDATIONS

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

SERIOUS ILLNESS—ACCIDENTS

	DATE		DATE

NOTE: The elementary school will provide test data, parental data and initial information on pages 2 and 3 as indicated.

ADDITIONAL INFORMATION (to be dated and signed)

ELEMENTARY

SECONDARY

IMMUNIZATIONS

TYPE		DATE
Smallpox		1956
D.P.T.	1.	
	2.	
	3.	1956
	B.	
Polio	1.	
	2.	
	3.	1961

EXHIBIT 7 A

Superintendent of Schools - Harold H. Eibling

MARION - FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 16, 1971

Mr. & Mrs. William Vance
1588 Burley Drive
Columbus, Ohio

Dear Parents:

I have suspended Tyrone, your son, from Marion-Franklin High School until Thursday, March 25. The Pupil Personnel Department of the Columbus Board of Education will notify you concerning a disposition of this case.

Tyrone was involved in a disturbance at school on Monday, March 15. He defiantly refused to follow the directions of the principal. Furthermore, he created an explosive situation.

During the suspension period, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

OSCAR R. GILL
Assistant Principal

EXHIBIT 7 B

COLUMBUS PUBLIC SCHOOLS
ACADEMIC RECORD

_____ SENIOR HIGH SCHOOL
(To be Retained)

NAME Washington (last) Tyrone (first) Lionel (middle) HOME ROOM 24

ADDRESS 1588 Burley Dr. PHONE 491-0769

RESIDES WITH William & Dolley Vance RELATIONSHIP parents

	DATE	REASON
WITHDRAWN	3-19-70	To Marion Franklin
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

TRANSCRIPT RECORD

DATE	SENT TO	COMMENTS
2-17-70	UA Adams Court	
4-1-70	Marion Franklin	

PHOTO

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME _____

ADDRESS _____

PHONE _____

Exhibit 7 B continued

_____ HIGH SCHOOL _____ COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME: Washington Tyrone Leonard ADDRESS: 1588 Burley Dr.

SEX: M DATE OF BIRTH: 4-2-52 PLACE OF BIRTH: Springfield Ohio

PARENT OR GUARDIAN: William & Betty Vance

DATE ENTERED: _____ ADMITTED FROM: Marion-Franklin

☐ WAS NOT GRADUATED ☒ WAS GRADUATED DATE OF DIPLOMA: JUN 6 1971

NUMBER IN GRADUATING CLASS: 311 RANK IN CLASS: 145 AS COMPUTED: June 1971

POINT AVERAGE: 1.861 AS COMPUTED: June 1971 Jacie N. Hill

SUBJECT	Year in School	Semesters or Units Completed	Grade Points	Final Grade				Credit Earned
LANGUAGE ARTS								
English I (9)	9	40	6-68	C				1
II (10)	10	40	6-69	C				1
III (11)	11	40	6-70	C				1
English Literature & Composition								
Cont. Literature & Composition								
Business English	12	40	1-71	C				1
Dramatics (9)	9	40	6-68	B				½
Journalism	9	40						
Speech I (9) Oral Skills and Techniques	9	40	1-71	C				1.0
Speech II (Debate)	9	40	1-71	C				1.0
SOCIAL STUDIES								
World History	9	40	6-69	D				
American History	10	40	6-70	C				1
Principles of Democracy	11	40	1-71	C				1.0
Current History	12	40	1-71	C				1.0
		40						
Geography	9	40						
	10	40						

SUBJECT	Year in School	Semesters or Units Completed	Grade Points	Final Grade				Credit Earned
MATHEMATICS								
General Mathematics	9	40	6-68	C				1
Shop Mathematics	9	40						
Algebra I	9	40	6-69	F				
Algebra II	9	40						
Geometry (Plane & Solid)	9	40						
Trigonometry	9	40						
Analytical Geometry	9	40						
Advanced Mathematics V	9	40						
Boolar Review Arithmetic	9	40						
Basic Math III	9	40	6-70	C				1
SCIENCE								
General Science I	9	40	6-68	F				
Physical Science II	9	40						
Biology I	9	40	6-69	C				1
Biology II	7	40						
Chemistry	7	40						
Physics	7	40						
FOREIGN LANGUAGE								
French I	9	40						
II	9	40						
III	9	40						
IV	9	40						
V	9	40						
German I	9	40						
II	9	40						
III	9	40						
IV	9	40						
V	9	40						
Latin I	9	40						
II	9	40						
III	9	40						

Exhibit 7 B continued

SUBJECT	Year in School	Semesters or Units Completed	Grade Points	Final Grade				Credit Earned
Latin IV	9	40						
V	9	40						
Russian I	9	40						
II	9	40						
III	9	40						
IV	9	40						
V	9	40						
Spanish I	9	40						
II	9	40						
III	9	40						
IV	9	40						
V	9	40						
BUSINESS EDUCATION								
General Business	9	40	6-68	B				1
Business Arithmetic	9	40						
Typing I	9	40	6-69	B				.5
II	9	40	1-71	B				.5
III	9	40						
Shorthand I	9	40						
II	9	40						
Bookkeeping I	9	40						
II	9	40						
Business Law	9	40						
Consumer Economics	9	40						
Business Machines	9	40						
Office Practice	9	40						
General Sales	9	40	6-70	C				1
Retail Sales	9	40						
Distributive Education		40						
ART I								
II								
III								
IV								
PHYSICAL EDUCATION I			6-68	B				.5
II			6-68	B				.5
III			6-70	Mod	Ed			.5
IV								
HEALTH EDUCATION	2	V	6-70	C				.5
SAFETY EDUCATION								

HOME ECONOMICS—INDUSTRIAL ARTS
Write in the specific subject area and the level of work (I, II, etc.)

SUBJECT AND LEVEL	Year in School	Semesters or Units Completed	Grade Points	Final Grade				Credit Earned
Example: Wood	1							
Mech DR		W	6-68	D				.5

SUBJECT	Year in School	Semesters or Units Completed	Grade Points	Final Grade				Credit Earned
DRIVER EDUCATION								
VOCAL MUSIC								
INSTRUMENTAL MUSIC								
VOCATIONAL SUBJECTS								

This high school is accredited by the North Central Association of Colleges and Secondary Schools.
Graduation requirements: 16 units of credit plus Health and Physical Education.
Length of class period: minimum of 45 minutes.
GRADE CODE: A—Excellent; B—Good; C—Average; D—Poor; F—Failing

Date	Total Credits	Teacher	Home Room
6-70	12.5	Mildred Ferguson	
6/71	15.0	E Ogunwuyi	211

S.Yrs. LEAVE: ☐ 8th ☐ 9th ☐ 10 th ☐ 11th ☐ 12th

Exhibit 7 B continued

NAME WASHINGTON (Last) Tyrone (First) Dennis (Middle) M F

HOME ROOM 211 211 1 107 211

GRADE LEVEL 7 8 10 11 12

PROMOTED FROM Main Street ELEMENTARY SCHOOL—DATE 6/65

GRADUATED FROM JUNIOR HIGH SCHOOL—DATE

GRADUATED FROM East SENIOR HIGH SCHOOL—DATE 6-71

CUMULATIVE PERSONAL RECORD
Columbus, Ohio, Public Schools
(To follow pupil)

IN CASE OF EMERGENCY NOTIFY:
(If Parent Not Available)
NAME Julian Washington
ADDRESS PHONE
NAME Mabel Washington
ADDRESS PHONE 444-7074
(Note: Use Pencil For Above)

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION
Franklin Jr	5-67	Track Team

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY
Franklin	1966-67	Track Club

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	HOURS*	REMARKS

OUT-OF-SCHOOL ACTIVITIES

DATE	

Exhibit 7 B continued

RESIDENTIAL DATA

SCHOOL		GRADE ENTERED	GRADE WITHDRAWN	ADDRESS	RESIDENCE	PHONE	PARENT OR GUARDIAN	TEACHER	PROMOTED STATE	PROMOTED CONDITIONAL
Main St	Elem	1/65	6/67	Mailing Perm. ☐ No Perm.	1539 E Rich St					
Franklin	Junior	9-65			1515 E Rich St					
	Junior									
	Junior									
East High School	Senior	9-67	5-68	Mailing Perm.	Same	Work	Parents			
M-F	Senior	3-69	3-1971	Graduate						
	Senior		6-71	GRADUATE						
	Senior									

PARENTAL DATA

	LAST	FIRST	MIDDLE	MARITAL STATUS	OCCUPATION	BUSINESS ADDRESS	BUSINESS PHONE	HOME PHONE
FATHER	Washington	John	W	Div				
MOTHER (Maiden name)		Willie		M				
STEP-PARENT	Banks	Willie		M	Unemp			
GUARDIAN								

ATTENDANCE DATA

SCHOOL	GRADE	DAYS ABSENT	TIMES TARDY	DAYS PRESENT	TIMES PRESENT	NUMBER OF SEMESTERS	CAUSE OF REPEATED ABSENCE OR TARDINESS
Main St	1	3	2	144½	172		1
Franklin Jr High	7	9	9	170	93		7
	8	9½	25	190	172	1	
	9	20	18	136	203	1	Poor
Linden	10	10	16	130	64½	1	
	10	2	13	172	54		(D to E)
Walnut Junior	11	8	5	97½	73½		
	11	5½	2½	108½	21½		
East	12	5½	5	80	11		

*Days of Absence Only—see No. 10 on back—should not be used with:
1. English 2. Physical Ed. 3. Typing 4. Geography
5. Commerce 6. Family Living 7. Out of Town 8. Religion

COUNSELING RECORD*

DATE	TYPE	COUNSELOR

*Type of Counseling Code:
1. Educational 2. Personal
3. Vocational 4. Other

Exhibit 7 B continued

TEST DATA

INTELLIGENCE

DATE	GRADE	NAME OF TEST	FORM	TYPE	IQ	MA	YEARS	MONTHS	TOTAL	% RANK
1-15-47	6	Calif. M.M.	S	Gp.					99	
2-5-48	8	Kuhlmann-Anderson	A	Gp.					19	

OTHER STANDARDIZED TESTS

DATE	GRADE	TYPE	NAME OF TEST	FORM	CITY NORM YES	CITY NORM NO	RESULTS
1-31-46	6	Gp.	Stanford Achi.	X	✓		Read. Word Mn. 57
1-31-46	6	Gp.	" "	X	✓		Arith. Comp. 68
							Com. Vo. Arith. 61

PERSONALITY TRAITS

	6	7	8	9	10	11	12
INITIATIVE							
Rarely conforms							
Seldom initiates							
Frequently initiates	✓	✓	✓	✓	✓	✓	
Self-reliant							
Actively creative							
WORK HABITS							
Seldom produces							
Works only under pressure							
Needs vocational guidance	✓	✓	✓	✓	✓	✓	
Considerably organized							
Seeks additional work							
INFLUENCE AND LEADERSHIP							
Negative							
Co-operative but retiring							
Contributing to minor efforts	✓	✓	✓	✓	✓	✓	
Contributes to important efforts							
Judgment requested - takes things up							

	6	7	8	9	10	11	12
CONCERN FOR OTHERS							
Indifferent							
Self-centered							
Somewhat socially concerned	✓	✓	✓	✓	✓		
Generally concerned						✓	
Deeply concerned							
RESPONSIBILITY							
Irresponsible							
Somewhat dependable	✓	✓	✓				
Usually dependable				✓	✓	✓	
Conscientious							
Assumes much responsibility							
EMOTIONAL STABILITY							
Unresponsive							
Excitable							
Usually well-balanced	✓	✓	✓	✓	✓	✓	
Exceptionally stable							

	6	7	8	9	10	11	12
ATTENTION TO SCHOOL REGULATIONS							
Actively opposes regulations							
Indifferent							
Usually cooperates	✓	✓	✓	✓	✓	✓	
Follows regulations conscientiously							
An exemplary school citizen							
PERSONAL APPEARANCE AND HABITS							
Generally inappropriate							
Tendency to follow extreme trends							
Usually tidy	✓	✓	✓	✓	✓	✓	
Neat and dressed in good taste							
Exceptionally attractive appearance							
ADDITIONAL COMMENTS							

Exhibit 7 B continued

ELEMENTARY SUMMARY

NAME WASHINGTON (Last) Dyrone (First) Bennett (Middle) M (Sex) From Main St. Elementary School

BIRTHPLACE Springfield (City or Town) Ohio (State) BIRTH DATE 4 (Mo.) 2 (Da.) 52 (Yr.) VALIDATION Birth Certificate

GENERAL ACADEMIC RATING

Excellent	
Above Average	
Average	✓
Below Average	
Poor	

SPECIAL APTITUDES

HEALTH DATA

Asthma		Nasal	
Brain damage		Nevrosis	
Cripples		Kidney	
Diabetes		Rheumatic Fever	
Epilepsy		Speech	
Hearing		Vision	

SPECIAL RECOMMENDATIONS

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

SERIOUS ILLNESS—ACCIDENTS

	DATE		DATE

NOTE: The elementary school will provide test data, personal data and initial information on pages 2 and 3 as indicated.

ADDITIONAL INFORMATION (to be dated and signed)

ELEMENTARY

SECONDARY

IMMUNIZATIONS

TYPE		DATE
Smallpox		[illegible]
D.P.T.	1.	[illegible]
	2.	[illegible]
	3.	[illegible]
	B.	[illegible]
Polio	1.	
	2.	[illegible]
	3.	
other school		

EXHIBIT 7 B continued

March 16, 1971

Mr. & Mrs. William Vance
1588 Burley Drive
Columbus, Ohio

Dear Parents:

I have suspended Tyrone, your son, from Marion-Franklin High School until Thursday, March 25. The Pupil Personnel Department of the Columbus Board of Education will notify you concerning a disposition of this case.

Tyrone was involved in a disturbance at school on Monday, March 15. He defiantly refused to follow the directions of the principal. Furthermore, he created an explosive situation.

During the suspension period, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

Oscar R. Gill
Assistant Principal

CC: Mr. C. L. Dumaree
Mr. H. M. Williams
Mr. Philip Fulton
Mr. Richard Kollmer

EXHIBIT 8 A

Superintendent of Schools - Harold H. Eibling

MARION - FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 15, 1971

Mr. & Mrs. Clarence L. Byars
1492 Venice Drive
Columbus, Ohio

Dear Parents:

I have suspended Clarence from Marion-Franklin High School until Thursday, March 18. I will reserve 9:00 a.m. on this day for a conference with you and your son.

Clarence refused to go to class as directed, was disrespectful with the principal, and was inciting a school disruption.

During the suspension period, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

Richard Kollmer
Assistant Principal

EXHIBIT 8 B

COLUMBUS PUBLIC SCHOOLS
ACADEMIC RECORD

Marion-Franklin SENIOR HIGH SCHOOL
(To be Retained)

NAME Byars Clarence Lee HOUSE ROOM [illegible]

ADDRESS 1492 Venice Dr PHONE 274-6765

RESIDES WITH Victoria Stanford RELATIONSHIP

	DATE	REASON
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

TRANSCRIPT RECORD

DATE	SENT TO	COMMENTS
1-10-72	Marietta College	
2-2-72	Columbus Urban League	
2-29-72	Hartford College	
5-9-72	Franklin H.	
6-26-72	Kenyon Inst. for Coll.	
7-27-72	Tuskegee Institute	
8-9-72	Tuskegee Inst. Alabama	
8-9-73	Franklin H	

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME

ADDRESS

PHONE

Exhibit 8 B continued

[illegible] Franklin 1 HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME Byars Clarence Lee ADDRESS 1492 Venice Dr.

SEX M DATE OF BIRTH 7 mo 4 da 54 yr PLACE OF BIRTH Columbus Ohio

PARENT OR GUARDIAN Clarence L. Barbara Foster

DATE ENTERED 9-69 ADMITTED FROM [illegible]

☐ WAS NOT GRADUATED ☒ WAS GRADUATED DATE OF DIPLOMA 6-11-72

NUMBER IN GRADUATING CLASS 328 RANK IN CLASS 94 AS COMPUTED 1-72

POINT AVERAGE 2.559 AS COMPUTED 1-72 Philip S. Fulton PRINCIPAL

SUBJECT									SUBJECT								
LANGUAGE ARTS									ARTS [illegible]								
English I	9	1	40	6-69	C		1		Lang. [illegible]		1	40					
II	10	1	40	6-70	B		1		Lang. Mathematics		1	40					
III	11	1	40	6-71	C		1		Algebra I	9	1	40	6-69	B			1
IV	12	1	40	6-72	C		1.0		Algebra II		1	40	6-70	C			1
English Literature & Composition		1	40	6-72	C				Geometry (Plane & Solid)		1	40	6-70	C			1
Lang. Literature & Composition		1	40						Trigonometry		1	40					
American English		1	40						Analytical Geometry		1	40					
									Advanced Mathematics II		1	40					
Composition III		1	40						Modern Business Arithmetic		1	40					
Composition		1	40														
Speech I (Public, Radio and Televisional		1	40														
Speech II Dramatics		1	40														
									SCIENCE								
									General Science I		1	40	6-69	A			1
									Physical Science II		1	40					
									Biology I		1	40	8-70	A			1.0
SOCIAL STUDIES									Biology II		1	40					
World History		1	40	6-69	C		1.0		Chemistry		1	40					
American History		1	40	6-70	B		1		Physics		1	40					
Principles of Democracy		1	40	6-71	B		1		Science Life		1	40	6-72	C			1.0
General History		1	20						FOREIGN LANGUAGE								
		1	20						French I		1	40					
									II		1	40					
									III		1	40					
Geography		1	20						IV		1	40					
		1	20						V		1	40					
									German I		1	40					
									II		1	40					
									III		1	40					
									IV		1	40					
									V		1	40					
									Latin I		1	40	6-71	C			1
									II		1	40	6-72	C			1.0
									III								

*Write S for Summer Jobs Instead of H for Academic Last Grade Completed

Exhibit 8 B continued

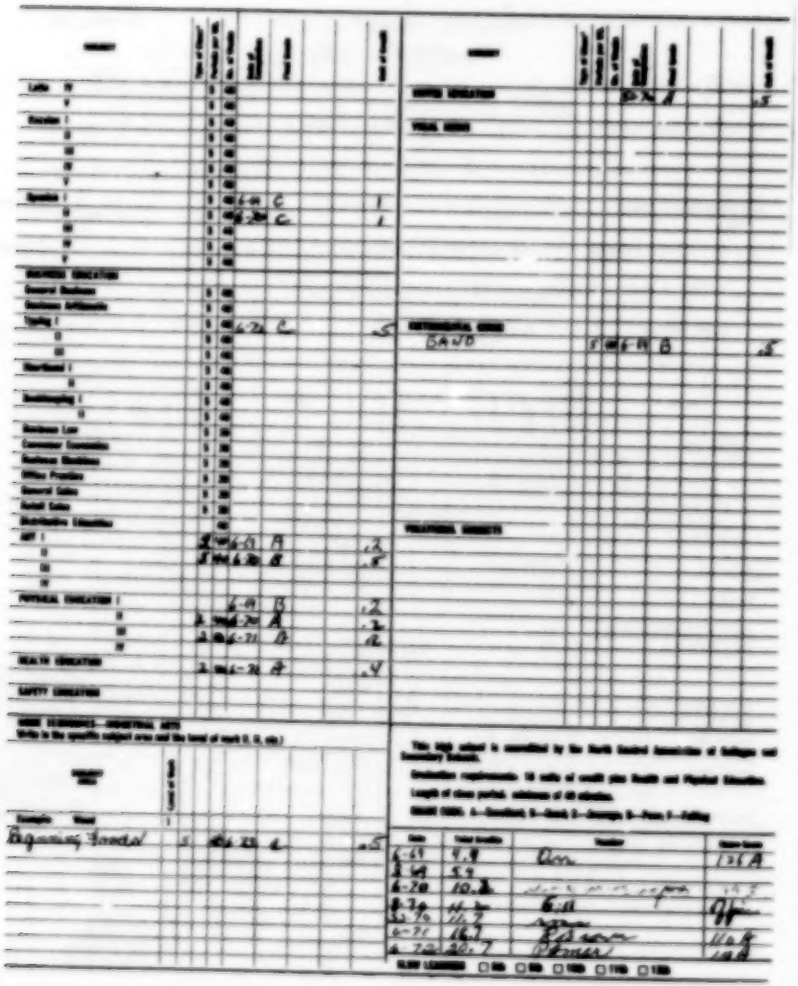


EXHIBIT 8 B continued

March 15, 1971

Mr. & Mrs. Clarence L. Byars
1492 Venice Drive
Columbus, Ohio

Dear Parents:

I have suspended Clarence from Marion-Franklin High School until Thursday, March 18. I will reserve 9:00 a.m. on this day for a conference with you and your son.

Clarence refused to go to class as directed, was disrespectful with the principal, and was inciting a school disruption.

During the suspension period, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

RICHARD KOLLMER
Assistant Principal

CC: Mr. C. L. Dumaree
Mr. H. M. Williams
Mr. Philip Fulton
Mr. Oscar Gill

CUMULATIVE PERSONAL RECORD

Columbus, Ohio, Public Schools

(To follow pupil)

NAME [illegible] CLARENCE [illegible] SEX M

HOME ROOM 207 [illegible] 207 [illegible] LMC [illegible]

GRADE LEVEL 7 8 9 10 11 12

PROMOTED FROM CLAYFIELD '67

GRADUATED FROM Beery ELEMENTARY SCHOOL—DATE

GRADUATED FROM Marion-Franklin JUNIOR HIGH SCHOOL—DATE 6-69

SENIOR HIGH SCHOOL—DATE 6-11-72

IN CASE OF EMERGENCY NOTIFY:
(If Parent Not Available)

NAME Mrs Hoff

ADDRESS Lockbourne Rd PHONE CL 29738

NAME

ADDRESS PHONE

(Note: Use Pencil For Above)

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION
Clayfield	1965-66	School Patrol
Beery	66-67	
Beery	67-69	Flag Award Athletic Letter (track) Scholarship award (Top Scholar)
M-E	[illegible]	[illegible]
M-E	70-71	
[illegible]	71-72	Pres. of [illegible] Club
	71-72	Football Letter
	71-72	3 year track award

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY
Beery	66-67	Band Track Team
Beery	67-68	Track Team Final Marie Band
		Pep Club
		Spon Helper
Beery	68-69	Band - Orchestra
"	" "	Track Team
M-E	3-70	Trip To Spain
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	HOURS*	REMARKS
71	Helping Lord / part time		

[illegible] ACTIVITIES

DATE	
M-E 70-71	Track, Football, County Track Varsity Ct. Club & Mary Football Letter
[illegible] 71-72	Football captain - All Scholastic Track Letter Track Outstanding Athlete Varsity Club Medieval Helper Spanish Club

RESIDENTIAL DATA

SCHOOL		DATE ENTERED	DATE WITHDRAWN	REASON	RESIDENCE	PHONE	ADDRESS WHEN DIFFERENT FROM RESIDENCE	TUITION PAID	NON-RESIDENT TUITION PAID BY: STATE	NON-RESIDENT TUITION PAID BY: COUNTY
Clayfield	Elem.	9-65		☐ Reg. From ☐ Sp. From	1492 Venice Dr.	491-1365	Mother & Dad			
Beery	Junior	9-66	6-69	Reg. From	"	"	"			
	Junior									
	Junior									
	Junior									
MARION [illegible]	Senior	9-69								
	Senior									
	Senior									
	Senior									

PARENTAL DATA

	LAST NAME	FIRST NAME	MIDDLE	MARITAL STATUS	OCCUPATION	BUSINESS ADDRESS	BUSINESS PHONE	RESIDENCE PHONE
FATHER	Byers	Clarence		D				
MOTHER (Maiden name)		Barbara Lowery			Secty	B.B.C.	228-4492	Dec. 444
STEP-PARENT	Foster	Clarence					276-26	772
GUARDIAN								

ATTENDANCE DATA

SCHOOL	GRADE	DATE ENTERED	TIMES TARDY	DAYS PRESENT	DAYS ABSENT	NUMBER OF SUSPENSIONS	COMMENTS, CIRCUMSTANCES UNDER SUSPENSION
Clayfield	6	9-65					
Beery Jr.	7	9-66	0	181	1	211	
Beery Jr.	8	9-67	0	180	6	186	
	9	9-68	3	179	3	3	
[illegible]	10	9-69	1	172	12		
A. [illegible]	11	9-70	11	163	12	2	At Southeastern
		9-71	2	169	12½	3	

COUNSELING RECORD*

DATE	TYPE	COUNSELOR

*Type of Counseling Code:
1. Educational 2. Personal
3. Vocational 4. Other

*Name of Absence Code (use for 10 or more days—several numbers may apply):
1. Illness 2. Personal Illness 3. Truancy 4. Suspension
5. Confinement 6. Family Illness 7. Out of Town 8. Indigent

TEST DATA

INTELLIGENCE

	DATE	GRADE	NAME OF TEST	FORM	TYPE	CA	MA	VERB.	NON-VERB.	TOTAL	% TILE
CA	9-43	3	Stanford Anderson			7-6	6-7			97	
	10-44	5	Calif. T. M.	B	G	10-2				109	
	9-45	6	" " "	A	G					99	
COMMENTS											

OTHER STANDARDIZED TESTS

	DATE	GRADE	TYPE	NAME OF TEST	FORM	CITY WIDE YES	CITY WIDE NO	RESULTS
CA	9-43	3	Arith	Friend of Arith.	I	x		21/50
	10-43	3	Read	Met. Read. Arith.	A	x		26-36 Raw Score
	3-45	5	Arith	Stanford Arith	M	x		Arith 4-8 Read 4-5
	4-46	6	Read	Stanford Arith	I	✓		Read 3.8 Arith 6.0
COMMENTS								

ADDITIONAL TESTS RESULTS—COMMENTS

8YARS CLARENCE L 8B

300 380 0371 AH460M1470 11

PERSONALITY TRAITS

	6	7	8	9	10	11	12
INITIATIVE							
Rarely conforms							
Seldom initiates							
Frequently initiates	✓	✓					
Self-reliant			✓	✓	✓	✓	✓
Actively creative							
WORK HABITS							
Solves problems							
Works only under pressure							
Needs occasional prodding	✓	✓		✓	✓	✓	✓
Consistently prepared			✓				
Seeks additional work							
INFLUENCE AND LEADERSHIP							
Negative						✓	
Co-operative but retiring							
Contributing in minor efforts	✓	✓		✓	✓		✓
Contributes in important efforts			✓				
Judgment regarded - seeks things up							

	6	7	8	9	10	11	12
CONCERN FOR OTHERS							
Indifferent							
Self-centered							
Somewhat socially concerned	✓	✓					
Generally concerned			✓	✓	✓	✓	✓
Deeply concerned							
RESPONSIBILITY							
Irresponsible						✓	
Somewhat dependable	✓						
Usually dependable		✓					
Conscientious			✓	✓	✓		✓
Assumes much responsibility							
EMOTIONAL STABILITY							
Unresponsive							
Excitable							
Usually well-balanced	✓	✓		✓	✓	✓	✓
Exceptionally stable			✓				

	6	7	8	9	10	11	12
ATTENTION TO SCHOOL REGULATIONS							
Actively opposes regulations							✓
Indifferent							
Usually cooperative	✓			✓			
Follows regulations conscientiously		✓	✓		✓		✓
An exemplary school citizen							
PERSONAL APPEARANCE AND HABITS							
Generally inappropriate							
Tendency to follow extreme trends							
Usually tidy	✓						
Neat and dressed in good taste		✓	✓	✓	✓	✓	✓
Exceptionally attractive appearance							
ADDITIONAL COMMENTS							

Exhibit 8 B continued

ELEMENTARY SUMMARY

NAME HYARS (LAST) CLARENCE (FIRST) LEE Jr. (MIDDLE) XXXX M (SEX) From CLAUFIELD Elementary School

BIRTHPLACE Columbus, Ohio (CITY OR COUNTY) (STATE) BIRTH DATE 3-24-34 (MO. DA. YR.) VALIDATION Vital Stat.

GENERAL ACADEMIC RATING

Excellent	
Above Average	
Average	
Below Average	
Poor	

SPECIAL APTITUDES

HEALTH DATA

Asthma		Heart	
Brain damage		Hernia	
Crippled		Kidney	
Diabetes		Rheumatic Fever	
Epilepsy		Speech	
Hearing		Vision	

SPECIAL RECOMMENDATIONS

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

SERIOUS ILLNESS—ACCIDENTS

	DATE		DATE

NOTE: The elementary school will provide test data, parental data and school information on pages 2 and 3 as indicated.

ADDITIONAL INFORMATION (to be dated and signed)

ELEMENTARY

SECONDARY

IMMUNIZATIONS

TYPE		DATE
Smallpox		1954
D.P.T.	1.	
	2.	
	3.	1957
	B.	1959
Polio Sabine	1.	
	2.	
	3.	1961
Salk #1		1959

Exhibit 8 B continued

EXHIBIT 9 A

Superintendent of Schools - Harold H. Eibling

MARION - FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 23, 1971

Mr. & Mrs. Freddie Robison
1456 Wayland Drive
Columbus, Ohio

Dear Mr. & Mrs. Robison:

I have suspended Bruce, your brother, from Marion-Franklin High School until Tuesday, March 30.

During the suspension the Pupil Personnel Department of the Columbus Board of Education will review with you the contents of the letter of November 6, 1970.

Bruce disrupted the assembly and walked out of the assembly this morning. This he did after the principal made clear if a student did he would be suspended.

During the suspension period, your brother is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

Oscar R. Gill
Assistant Principal

EXHIBIT 9 B

November 6, 1970

Mr. & Mrs. Freddie Robison
1456 Wayland Drive
Columbus, Ohio 43207

Dear Mr. & Mrs. Robison:

This letter is to confirm the phone conversation I had with Bruce last night. We have been able to clear things for Bruce to return to Marion-Franklin High School. This special permission has been approved by Mr. Fulton, the principal at Marion-Franklin. Bruce is to report to Mr. Fulton on November 9.

As I explained to Bruce, we will expect him to have good behavior, satisfactory attendance and make normal progress in his school work. If he falls below normal expectation in any one of these three areas, I have asked Mr. Fulton to contact me. I feel sure, however, that this will not be the case and that Bruce will finish the year at Marion-Franklin.

Sincerely,

Norval Goss
Pupil Personnel Dept.

EXHIBIT 9 C

COLUMBUS PUBLIC SCHOOLS

ACADEMIC RECORD

Eastmoor SENIOR HIGH SCHOOL
(To be Published)

NAME Harris Roger HOME ROOM

ADDRESS PHONE

RESIDES WITH RELATIONSHIP

DATE OF BIRTH 9-13-51 DATE ENTERED

	DATE	REASON
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

PHOTO

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME

ADDRESS

PHONE

Exhibit 9 C continued

Eastmoor HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME Harris Roger ADDRESS

SEX M DATE OF BIRTH 9 13 51 PLACE OF BIRTH Macon City Ga

PARENT OR GUARDIAN

DATE ENTERED ADMITTED FROM Macon - Douglas

☐ WAS NOT GRADUATED ☑ WAS GRADUATED DATE OF DIPLOMA 6-14-72

NUMBER IN GRADUATING CLASS 109 RANK IN CLASS 93 LAST COMPUTED 5-3-72

POINT AVERAGE 1.0741 AS COMPUTED 2-16-72 Jim Dannon PRINCIPAL

SUBJECT	GRADE	CREDIT	SUBJECT	GRADE	CREDIT
English I	D	1	Mathematics	D	1
English II	D	1	General Mathematics	D	1
English III	D	1	Algebra I		
English IV	D	1	Algebra II		
Speech I (Public Talks and Functions)	D	½	Geometry (Plane & Solid)		
Speech II (Discussion)	D	½	Trigonometry		
			Practical Arithmetic		
			Advanced Mathematics I		
			Senior Review Mathematics		
Journalism	D	1	Bus. Math I	D	½
			Bus. Math II	D	½
			Science		
			General Science I	D	1
			Physical Science II	D	1
			Biology I	D	1
			Biology II		
			Chemistry		
			Physics		
World History	D	1	Foreign Languages		
American History	D	1	French I		
Principles of Democracy	D	½	II		
Current History	D	½	III		
Civics	D	½	IV		
Health and Physical Education	D	½	Spanish I		
Health	D	½	II		
			III		
			IV		
			German I		
			II		
			III		
			IV		
			Latin I		
			II		
			III		
			IV		

* Units if for honors (plus research) or if for certificate. Leave blank if regular.

Exhibit 9 C continued

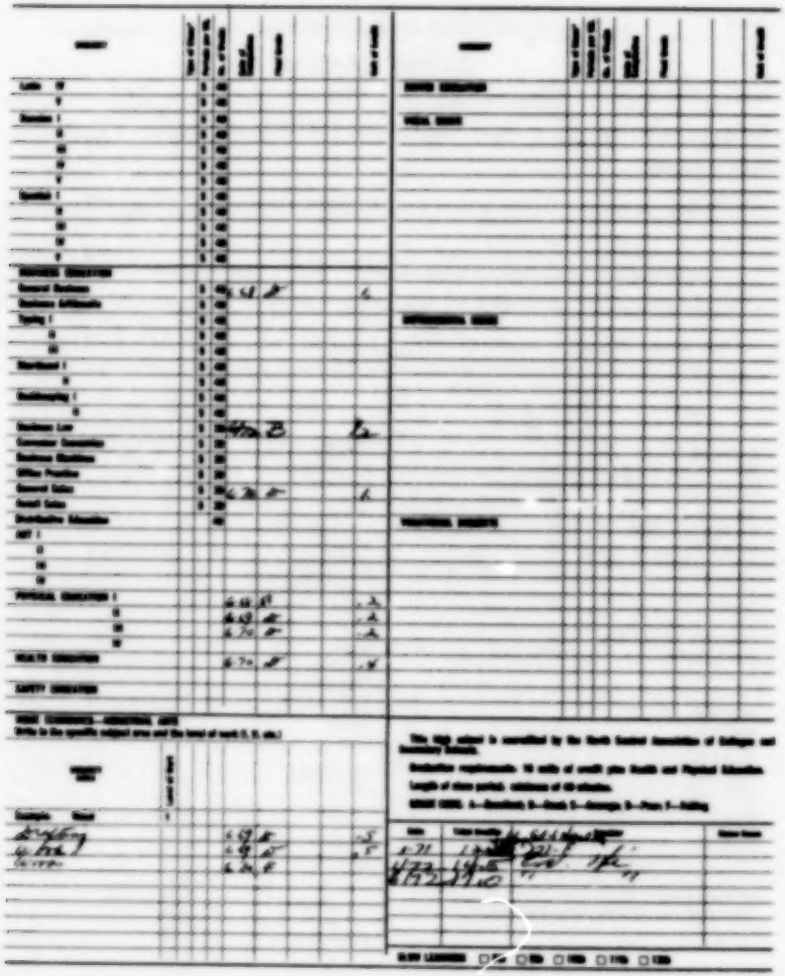


Exhibit 9 C continued

TRANSCRIPT RECORD

DATE	SENT TO	COMMENTS
10/6/72	Waldorf College Transcript	Waldorf College

NAME Harris Bruce — M F

HOME ROOM 211 Lib 211 104

GRADE LEVEL 7 8 9 10

PROMOTED FROM Highland — ELEMENTARY SCHOOL — DATE 6-62

GRADUATED FROM — JUNIOR HIGH SCHOOL — DATE

GRADUATED FROM — SENIOR HIGH SCHOOL — DATE

CUMULATIVE PERSONAL RECORD
Columbus, Ohio, Public Schools
(To follow pupil)

IN CASE OF EMERGENCY NOTIFY:
(If Parent Not Available)
NAME
ADDRESS PHONE
NAME
ADDRESS PHONE
(Note: Use Pencil For Above)

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION
Westmoor	66-67	Most Valuable Player Track Team
West	'69	Jackets
West	'69	Football, Columbus Jr Olympics
W.S.T	70	Football

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY
Westmoor	66-67	Track Team
Westmoor	67-68	H&A-Y
West	'69	Varsity "W"
W.S.T	70	Varsity "W"

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	HOURS	REMARKS
	Janitor	8	

OUT-OF-SCHOOL ACTIVITIES

DATE	
66-67	Y.M.C.A.
'69	Summer League Football
'69	Life Guard

Exhibit 9 C continued

RESIDENTIAL DATA

SCHOOL		DATE ENTERED	DATE WITHDRAWN	REASON	RESIDENCE	PHONE	PARENT, GUARDIAN OR STATE	IN DISTRICT STATE	IN DISTRICT COUNTY
Highland	Elem.	9-21-65	6-65	To W.S.T.	7982 Applewhite				
Westmoor	Junior	9-21	6-68						
	Junior								
	Junior								
	Junior								
West	Junior	9-68	6-70	To W.S.T.	1435 Westland Ave.		Mother		
Memorial Franklin	Senior	9-70							
	Senior		6-71	Graduation					
	Senior								

PARENTAL DATA

	NAME	RESIDENCE	PARENT OR GUARDIAN	OCCUPATION	BUSINESS ADDRESS	BUSINESS PHONE	HOME PHONE
FATHER	Harris		P	Truck Driver			
MOTHER (Name also)	Bruce		P				
STEP-PARENT							
GUARDIAN							

ATTENDANCE DATA

SCHOOL	GRADE	DATE ENTERED	TIMES ABSENT	DAYS ATTENDED	DAYS ABSENT	NUMBER OF TARDINESS	REASON FOR LEAVING OR CAUSE OF ABSENCE
Highland	6	9-65	9	144	16	1	
Westmoor	7	9-66	1	170	13	1	
Westmoor	8	9-67	11	166	24		
Westmoor	9	9-68	9	149	34	3	
West	10	9-69	8	167	9		
West	10	6-70	8	99	15		
West	11	9-69	10	172	6		
W.S.T.	11	6-70	20	99	13		
W.S.T.	12	9-70	17	162	40		

COUNSELING RECORD*

DATE	TYPE	COUNSELOR

*Types of Counseling Code:
1. Educational 2. Personal
3. Vocational 4. Other

*Reasons of Absence Code: use for 10 or more days' absence (withdrawal code used):
1. Illness 2. Personal Illness 3. Trouble 4. Suspension
5. Confinement 6. Family Illness 7. Out of Town 8. Indigent

Exhibit 9 C continued

TEST DATA

INTELLIGENCE

	DATE	GRADE LEVEL	NAME OF TEST	FORM	TYPE	CA	MA	IQ RAW SCORE	IQ SCORE	TOTAL	% TILE
GIA	9 26 57	6	Stanford Binet							79	
ACHIEVEMENT	10-66	8	Metro Test	A	Gd	14-1				78	

OTHER STANDARDIZED TESTS

	DATE	GRADE LEVEL	TYPE	NAME OF TEST	FORM	CITY WIDE %ILE	CITY WIDE SD	RESULTS
GIA	1-10-61	6 Para		Stanford	1	x		Arithmetic Reading 8.3
	"	6 Para			2	x		7.6
ACHIEVEMENT	4-64	8	Iowa	Calif Comp	W	✓		Read 9.7 Lang 10.7 Spell 9.3
	2-66	8	Para	Calif Achiev	X	✓		8.6 9.3 8.1

ADDITIONAL TESTS RESULTS - COMMENTS

PERSONALITY TRAITS

	6	7	8	9	10	11	12
INITIATIVE							
Merely conforms							
Seldom initiates			✓		✓		
Frequently initiates							
Self-reliant		X					
Actively creative							
WORK HABITS							
Seldom produces	✓						
Works only under pressure			✓		✓		
Needs occasional prodding		X					
Considerably prepared							
Seeks additional work							
INFLUENCE AND LEADERSHIP							
Negative							
Co-operative but retiring					✓		
Contributing in minor efforts		X		✓			
Contributes in important efforts							
Judgment respected - relies things go							

	6	7	8	9	10	11	12
CONCERN FOR OTHERS							
Indifferent	✓						
Self-centered							
Somewhat socially concerned		X		✓		✓	
Generally concerned							
Deeply concerned							
RESPONSIBILITY							
Irresponsible							
Somewhat dependable	✓	X		✓		✓	
Usually dependable							
Considerate							
Assumes much responsibility							
EMOTIONAL STABILITY							
Unresponsive							
Excitable							
Usually well-balanced		X	✓		✓		
Exceptionally stable							

	6	7	8	9	10	11	12
ATTENTION TO SCHOOL REGULATIONS							
Actively opposes regulations							
Indifferent	✓	X					
Usually cooperative					✓		✓
Follows regulations conscientiously							
An exemplary school citizen							
PERSONAL APPEARANCE AND DRESS							
Generally inappropriate							
Tendency to follow extreme trends							
Usually tidy		X			✓		✓
Neat and dressed in good taste							
Exceptionally attractive appearance							
ADDITIONAL COMMENTS							

ELEMENTARY SUMMARY

NAME Harris (LAST) Bruce (FIRST) (MIDDLE) (M) F From Highland (Elementary School)

BIRTHPLACE Mason City, Mason (CITY, State) W. Va. (STATE) BIRTH DATE 9 (MO.) 13 (DA.) 51 (YR.) VALIDATION Birth cert

GENERAL ACADEMIC RATING

Excellent	
Above Average	
Average	
Below Average	
Poor	✓

SPECIAL APTITUDES

HEALTH DATA

Asthma		Heart	
Brain damage		Hernia	
Crippled		Kidney	
Diabetes		Rheumatic Fever	
Epilepsy		Speech	
Hearing		Vision	

SPECIAL RECOMMENDATIONS

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

SERIOUS ILLNESS—ACCIDENTS

	DATE		DATE

NOTE: The elementary school will provide test data, parental data and health information on pages 2 and 3 as indicated.

ADDITIONAL INFORMATION (to be dated and signed)

ELEMENTARY

SECONDARY

IMMUNIZATIONS

TYPE		DATE
Smallpox		1964
D.P.T.	1.	
	2.	
	3.	1960
	4.	1963
Polio	1.	
	2.	1960
	3.	
Measles		1963

EXHIBIT 10 A

COLUMBUS PUBLIC SCHOOLS
270 East State Street, Columbus, Ohio 43215

Dear

Please be advised that your son, daughter, _____, has been expelled from further school attendance under the authority of Section 3313.66 Ohio Revised Code, for _____ at _____ High School on _____, 197 .

This expulsion will continue in effect for the remainder of the current semester.

It must be understood that during the period of this expulsion, _____ shall not be present in any public school or on the school grounds or in the school building of any school of the Columbus City School District.

You are further advised that under the authority of Section 3313.66 Ohio Revised Code, you or your son, daughter have the right to appeal this expulsion at a meeting of the Columbus Board of Education.

You are also advised that at the end of the current semester, you may initiate the reinstatement of the above named student through the Department of Pupil Personnel of the Columbus City Schools.

We are sorry that this action is necessary, but we believe that it is the only course justified at this time.

Sincerely yours,

JOHN ELLIS
Superintendent of Schools

EXHIBIT 11

COLUMBUS PUBLIC SCHOOLS
270 East State Street, Columbus, Ohio 43215

Dear

I am sorry to hear of the regrettable incident involving your _____, _____ at _____ High School. Because of the severity of this problem Mr. _____, Principal at _____, has recommended that _____ be expelled from school.

In accordance with required procedure in such a matter, this letter is official notice to you of a hearing of _____ case. This hearing is scheduled for the Board of Education room at 270 East State Street at _____ on _____, 197 .

Sincerely

NORVAL GOSS, *Director*
Pupil Personnel

EXHIBIT 12

ADMINISTRATIVE GUIDE
Section 1010—DISCIPLINE OF PUPILS

1010.01—Disciplinary measures shall be reasonable and appropriate to the nature of the misbehavior of the offending pupil and in accordance with the holdings of Ohio courts of law.

1010.02—Although no staute makes a specific mention of corporal punishment, Ohio courts have held that a teacher or principal may administer such punishment. In the Columbus Public Schools, corporal punishment may be used as a last resort and after all other means of punishment have proved ineffectual. Corporal punishment must be administered in the presence of at least one adult witness.

1010.03—Under no circumstances shall punishment be cruel or excessive or administered from malice or passion.

1010.04—Pupils may be suspended or expelled from school in accordance with the provisions of Section 3313.66 of the Revised Code.

EXHIBIT 13

COLUMBUS PUBLIC SCHOOLS
Policy Statement on Discipline

The belief that the Columbus Public School System has a responsibility to teach proper behavior patterns is based on the following premises:

1. The school must provide educational opportunities so every child may achieve to his fullest potential and become a contributing citizen in a democracy.

2. The child is a social being and as such must learn to recognize that certain types of behavior are necessary in a democratic society. Disciplined behavior is a basic need of such a society.

3. Discipline is a developmental need of each pupil. There is a feeling of security if limits are known to pupils and they live within appropriate limits.

4. Discipline has two major purposes: 1) securing a classroom atmosphere conductive to maximum educational achievement; 2) helping each pupil develop self control.

5. The development of an educational environment conducive to learning and individual self control is delegated to the school by society as its agency for perpetuating and improving the democratic way of life. Thus good discipline is a legitimate task and assigned responsibility of the school.

From these premises the following areas of responsibility develop:

Responsibility of the Pupils

Pupils shall accept the authority which has been delegated to the school by society.

Pupils shall respect those rules and regulations necessary for the orderly operation of the school and growth in citizenship.

Pupils shall respect school property, the rights of others, and the opinions of others. They must learn to accept the consequences of their decisions and behavior.

Pupils shall dress and groom themselves in a manner which will not infringe upon an atmosphere conducive to learning, and for the same reason shall maintain habits of personal cleanliness.

Pupils shall strive to develop habits of self-discipline that they may make positive contributions to the society in which they live.

Pupils shall behave in such a way that they will bring credit to themselves and their school.

Responsibility of Teachers

Teachers shall regard each pupil as an individual worthy of respect and dignity and shall help each pupil learn to regard himself in this manner.

Teachers shall present a program of instruction that will enable each pupil to achieve his full academic and social potential in each area of study.

Teachers shall help each pupil to understand the nature of acceptable and unacceptable behavior in the development of the desired goal: self-discipline.

Teachers shall set an example of acceptable behavior with respect to dress, grooming, coiffure, speech, and manners.

Teachers shall work with administrators and other staff personnel to promote a climate conducive to learning and achievement in the school.

Teachers shall accept responsibility for knowing and enforcing the rules and regulations of the school.

Responsibility of the Principal

The principal shall work with his staff to create an environment conducive to learning.

The principal shall involve the staff of specialized personnel, including school psychologists, school counselors, attendance officers, and health personnel, in dealing with individual and group behavioral problems.

The principal, with the advice of the staff, shall develop school rules and regulations that will encourage pupils to develop acceptable patterns of social behavior.

The principal, with the advice of the staff, shall develop school rules and regulations that will encourage pupils to develop acceptable patterns of social behavior.

The principal shall consider initiating a student advisory group to aid in the implementation of school rules and regulations.

The principal, by virtue of his position of authority, shall keynote the approach to good discipline in his school. In this vital area of school affairs, he and his staff shall work cooperatively on problems of behavior. The administrator may deem it best to use forms of punishment not available to the teacher, such as corporal punishment or suspension. The final decision on the appropriate form of punishment to be employed rests with the administrator, since such responsibility has been delegated to him by the Board of Education.

EXHIBIT 14

TO: ALL PRINCIPALS
FROM: NORVAL GOSS, PUPIL PERSONNEL
DATE: JULY 10, 1973
SUBJECT: SUSPENSION

Section 3313.66 of the Ohio Revised Code states that:

> "the principal of a public school may suspend a pupil from school for not more than ten days. Such — principal shall within twenty-four hours after the time of — suspension, notify the parent or guardian of the child, and the clerk of the Board of Education in writing of such — suspension including the reasons therefore."

In order to assure full compliance with this important section of the Revised Code; to guarantee that each pupil is treated equally and fairly, and further to assure consistency in the administrative practices in our schools, guidelines have been established which are to be followed in all cases where a student is suspended from school.

A. **Grounds for suspension**

1. Violation of any City of Columbus ordinance of state or federal law; and

2. Violation of written school rules or Board of Education regulations; and

3. Activities which interefere with or threaten the orderly functioning of school activities including classroom, extra-curricular and athletic activities; and

4. Any activity which is grounds for expulsion. This shall include, but not be limited to assault on a teacher, arson, or destruction of school property, active leadership in school disruption and direct refusal to follow a direct order from an administrator in time of school tension.

B. **Suspension Procedures**

1. Whenever an incident occurs that may lead to a suspension, the principal or assistant principal shall investigate the nature of the alleged offense before commencing suspension procedures. Unless the pupil is unavailable or unwilling to discuss the incident with the principal, this investigation shall include a discussion with the pupil so that the pupil may be given an opportunity to be heard with respect to the alleged offense.

2. If the principal determines that grounds for suspension do exist, he shall notify the pupil of the exact reason and length of the suspension and further inform the pupil that the suspension means he must stay off school property and away from school-sponsored activities during the entire term of the suspension.

3. Notify the parent or guardian of the suspension, by phone if possible, and explain the reason and length of the suspension. Except in cases of disruption where circumstances make it vital that one or several pupils be removed from the school property immediately because of a threat to the safety of other pupils, faculty or school property, no pupil shall be released from school during

the school day without notifying the parent or guardian in person or by phone.

4. The parent or guardian shall be provided an opportunity to attend a conference with the principal, to review the reasons for the suspension.

5. Within 24 hours after the incident leading to the suspension, a letter shall be written to the parents or guardian which shall include the reason for and term of the suspension and that a conference with the principal will be arranged, at mutual convenience, at the earliest possible time. A carbon copy of this letter, together with relevant information regarding the suspension, shall be sent to Pupil Personnel (designated agent of Clerk of Board of Education).

6. In the event that any suspension is subsequently found to be erroneous, all references to the suspension shall be expunged from the school records.

7. At the conclusion of a suspension it is the responsibility of the principal to see that the pupil is informed that the suspension is terminated and he is eligible to return to school.

Approved: C. L. Dumaree

DEFENDANTS' EXHIBIT B

	1967-68		1968-69		1969-70		1970-71		1971-72		1972-73		
	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Final point average
Byars, Clarence			5.9	2.70	5.7	2.67	5.1	2.63	4.0	2.00			2.559
Cooper, Susan			4.7	1.98	5.7	1.91	5.1	1.80	2.5	2.20			1.933
Crome, Betty							(2.8)	.70	(2.2)	.71	4.2	1.00	
Fox, Deborah					4.7	2.04	5.7	1.91	5.0	1.36	1.5	3.66	2.087
Harris, Bruce	4.2	1.33	3.2	.76	2.6	.63	2.5	1.17	4.0	1.89			1.074
Lopez, Dwight	4.2	1.33	.2	.04	5.6	.85	3.0	1.66	4.0	2.11			1.037
Smith, Carl	4.7	1.19	1.0	.19	4.2	1.09	2.7	1.90	4.4	1.77			1.258
Sutton, Rudolph	4.2	1.57	5.9	1.68	4.6	2.28	4.0	1.75					1.818
Washington, Tyrone	4.8	2.00	3.7	1.40	4.2	2.00	5.5	2.09					1.861

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRIT OF OHIO
EASTERN DIVISION

Filed July 17, 1973

(Title omitted in printing)
Civil Action No. 71-67

MOTIONS OF ALL DEFENDANTS

Motion to Dismiss for Failure to Establish That Plaintiffs Have Been Deprived of A Federal Right and for Failure to Establish By the Requisite Degree of Proof That Section 3313.66, Revised Code, Is Unconstitutional.

All defendants at the close of plaintiffs' evidence for- to formally enter an order dismissing the above action which has now been concluded for the reasons that:

1. Plaintiffs have not established that they have been deprived of a Federally protected right or right specifically guaranteed by the Fourteenth Amendment to the United States Contsitution; and

2. Plaintiffs have not established by the required degree of proof that Section 3313.66 of the Ohio Revised Code is unconstitutional and they are therefore not entitled to an injunction enjoining the operation of the statute as being unconstitutional.

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DALE A. CRAWFORD, *Of Counsel*
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MEMORANDUM

All defendants at the close of plaintiff's evidence formally made a motion to dismiss the above action. These defendants now reduce that motion to writing, and submit the same to this Court together with the previous motion which all defendants filed herein, wherein they requested that plaintiffs be placed upon their burden of proof.

The instant action was prosecuted as an action under 42 U.S.C., Section 1983, for the deprivation of a right guaranteed by the United States Constitution. It cannot be questioned but that the burden rests on plaintiffs in bringing such an action to establish that the defendants involved acted under color of law in such a manner as to deprive the plaintiffs of a Federally protected right or a right guaranteed by the Constitution. *Beaumont v. Morgan*, 427 F. 2d 667, at 670 and *Chism v. Price*, 457 F. 2d 1037 at 1039. Plaintiffs may not use 42 U.S.C. Section 1983 for the purpose of redressing rights guaranteed to them only by State law. *Charters v. Shaffer*, 181 F. 2d 764.

Reviewing the evidence submitted in the instant case, it is quite apparent that the only evidence before the Court at this particular time is evidence that the suspensions involved were suspensions which arose out of a period of stress and a period of disruption. Three plaintiffs testified and the substance of their testimony corroborates the fact that their suspensions arose out of periods of disruptions. That testimony is further substantiated by the testimony of Principal Philip Fulton which was submitted by defendants. No other evidence of any other type of suspension is before the Court as a result of the evidentiary hearing held on July 16, 1973. Further, examination of the plaintiffs' cumulative record

which has been submitted into evidence together with defendants' Exhibit B, which is a compilation of the school work by each of the individual plaintiffs, will not support a conclusion that any of these particular plaintiffs sustained any harm as a result of the suspension given anyone of them in either February, March or April of 1971. In fact, an examination of defendants' B, which was admitted into evidence will show that these plaintiffs' grade and point hours remain very consistent throughout the entire progress of their education through the Columbus Public School system. In addition, the testimony of at least one of the plaintiffs on July 16, 1973, indicated that she graduated prior to the time that she normally would have graduated or prior to the time that she would normally have been expected to graduate. Further examination of their cumulative records in relation to defense Exhibit B will disclose that several of the plaintiffs, Dwight Lopez, being one, had prior academic problems at the school during which time they earned so few credits that their graduation from school was delayed by reason of the fact that during one particular school year, namely, the school year 1968-69, they earned so few credits that it took them another school year in order to permit them to pick up the necessary credits that they needed in order to graduate. Specifically, if this Court will check defendants' Exhibit B, which has been admitted, for plaintiff Dwight Lopez, who testified during the course of the hearing, you will find that for the school year 1968-69, Dwight Lopez earned only two-tenths of a credit. Defendant Norval Goss testified that it takes 17 credits to graduate from high school and therefore it is quite easy to ascertain that if Mr. Lopez had any delay in graduating it was due solely to the fact that he earned so few credits dur-

ing the school year 1968-69. Plaintiffs presented no evidence such as would support a conclusion that a right of liberty or property is involved in this particular case. In other words, plaintiffs have not presented evidence such as discloses first and foremost that this Court is involved with a right of liberty or property such as is cognizable under the Fourteenth Amendment to the United States Constitution. *Morrissey v. Brewer*, 33 L. Ed. 2d 484; *Board of Regents v. Roth*, 408 U.S. 564 and *San Antonio Independence School District v. Rodriquez*, 41 U.S. L.W. 4407. The evidence or testimony submitted by the two psychologists and school guidance counselor called by plaintiffs does not serve to enable and to demonstrate that a right of liberty or property is involved. In fact, that testimony to which defendants objected and moved to strike is based wholly upon assumptions unsupported by any factual data actually in evidence. None of the psychologists or the school guidance counselor examined or talked to the plaintiffs or examined their cumulative school records. In fact, a study of the evidence relating specifically to each plaintiff, together with the opinions expressed by the psychologists and guidance counselor show the evidence to be in conflict, since there is no evidence any of the so-called harms were actually sustained by any single plaintiff. In fact, a conclusion that they sustained no harm is quite supportable. Therefore, their opinions concerning the effect of suspension are opinions which rest wholly on the total absence of a supportive factual background, and they are therefore entitled to no weight. Those opinions would have been perfectly proper before a legislative body arguing for a change in the law.

All defendants herein previously on May 25, 1973 filed a motion in which they requested that plaintiffs be

placed upon their burden of proof. This Court now has this motion under consideration and by this written motion defendants wish to indicate to the Court that they fully rely on that motion. The plaintiffs in this case attack Section 3313.66 of the Ohio Revised Code as being unconstitutional and ask this Court to grant an injunction enjoining the operation of that statute. In making the challenge to the statute, given the fact that the statute enjoys a presumption of constitutionality, the plaintiffs in this case had a heavy burden of proof to establish that the same was unconstitutional. *San Antonio Independence School District v. Rodriquez*, 36 L. Ed. 2d 16; 16 Am. Jur. 2d, Constitutional Law, Sec. 172, 173, 174 and 175. All defendants herein submit that the total factual evidence submitted by plaintiffs does not meet the required burden of proof of establishing that Section 3313.66 of the Ohio Revised Code is unconstitutional.

For the above reasons, all defendants herein respectfully request that the motion to dismiss which they made at the close of plaintiffs' evidence be granted for the reasons stated in this written motion.

Respectfully submitted,
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(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Filed August 31, 1973

(Title omitted in printing)
Civil Action No. 71-67

AMENDED COMPLAINT

1. This is an action for injunctive and declaratory relief authorized by Title 42 U.S.C. Section 1983 to secure rights, privileges and immunities established by the First and Fourteenth Amendment to the Constitution of the United States.

JURISDICTION

2. The jurisdiction of this Court is invoked under Title 42 U.S.C. Section 1343(3) providing for original jurisdiction of this Court in suits authorized by Title 42 U.S.C. Section 1983 and under Title 28 U.S.C. Sections 2201 and 2202 relating to declaratory judgments.

3. Plaintiffs respectfully request that a three-judge Court be convened pursuant to Title 28 U.S.C. Section 2281 in that plaintiffs seek to enjoin the enforcement of State Statute by an officer of the State on the grounds that said statute and its implementation violate the Constitution of the United States.

CLASS ACTION

4. Plaintiffs bring this action on their own behalf and on behalf of all other students residing in the City of Columbus who are similarly situated and affected by the policy and usage complained of herein. The mem-

bers of the class on whose behalf plaintiffs sue are so numerous as to make it impracticable to bring them all individually before this Court. There are common questions of law and fact involved and plaintiffs' claim is typical of the claim of the entire class. Plaintiffs fairly and adequately represent and will protect the interest of the class. Defendants have acted on grounds generally applicable to plaintiffs' class. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

DEFENDANTS

5. Defendant Norval Goss is the Director of the Department of Pupil Personnel of the Columbus Public Schools.

6. Defendant James Furgason is the Principal and Chief Administrative officer of Central High School.

7. Defendant James Boster is the Principal and Chief Administrative officer of Marion-Franklin High School.

8. Defendant John Mulherin is the Principal and Chief Administrative officer of McGuffey Junior High School.

9. Defendant John Ellis is Superintendent of Schools of the Columbus Public Schools and is the Executive and Administrative officer of the Columbus Board of Education pursuant to Section 3301.11 of the Ohio Revised Code.

10. Defendant Columbus Board of Education is and was at all times material hereto entrusted with the

management and control of all matters relating to the Columbus Public Schools pursuant to Chapter 3313 of the Ohio Revised Code. Defendants Virginia Prentice, Thomas Moyer, Marilyn Redden, Marie Castleman, David Hamlar, Paul Langdon, and Watson Walker are the present members of the Board of Education.

CLAIM OF DWIGHT LOPEZ

11. Mrs. Eileen Lopez is the parent and natural guardian of Dwight Lopez, a minor, 19 years of age on whose behalf she has filed suit. Dwight Lopez is in the 12th grade at Central High School.

12. Lopez was suspended without prior hearing on the 26th of February by Calvin Park then principal of Central High School. Lopez was advised of the suspension in writing by a letter mailed to him and received February 27, 1971. No return date was fixed in his suspension. On March 1, 1971 Mr. and Mrs. Lopez were advised that they would have to appear at the Board of Education before Dwight Lopez could return to school.

13. On March 5, 1971 the School Board acting through Herbert M. Williams then Director of Pupil Personnel delivered a letter to Mr. and Mrs. Lopez advising them to appear March 8, 1971 at 8:30 A.M. Because of a demonstration being conducted at the Board of Education offices that morning neither Dwight or Mr. and Mrs. Lopez appeared at the Board as scheduled. Dwight Lopez has not been advised of the complete and specific reasons for his suspension, and no hearing has been held concerning being readmitted to Central High School, and he is being denied an opportunity to continue his education there.

14. Following March 8, 1971 Mrs. Lopez called the School Board on several occasions, as did her daughter, Alma Robinson, but no new date was set for hearing.

Mrs. Robinson thereafter wrote to the School Board on March 22, 1971 and by letter dated March 25, 1971 received March 26, 1971 from defendant, H. M. Williams, Mrs. Lopez was advised that since Dwight had missed his appointment March 8, 1971 and had made no attempt to make a new appointment, he was granted permission to report to the adult day school at Nelson Road.

15. To the date of the filing of this Complaint no hearing has ever been held in Dwight Lopez's case and he has not been advised in writing the reason for his suspension or expulsion from the regular day school of Central High School.

CLAIM OF BETTY JEAN CROME

16. Mrs. Martha Jean Adams is the parent and natural guardian of Betty Jean Crome, a minor, 13 years of age.

17. Betty Jean Crome was suspended from school by Frank Mason then principal of McGuffey Junior High School. The plaintiff Betty Jean Crome was suspended from McGuffey Junior High School, where she is a student in the 7th grade on the 8th day of March, 1971 without prior hearing. Betty Jean Crome was advised that she was to report to school with her mother on March 15, 1971. Mrs. Adams was unable to be with her daughter on readmission however and that requirement was relaxed.

18. Betty Jean Crome was readmitted to school on the 15th day of March and no hearing was held on the reasons for suspension and said suspension has become part of her permanent school record.

CLAIM OF RUDOLPH R. SUTTON

19. Floyd Sutton is the parent and natural guardian of Rudolph Sutton, a minor 19 years of age on whose

behalf he has filed suit. Rudolph Sutton is a student at Marion-Franklin High School in the 12th grade.

20. Rudolph Sutton was suspended from school on the 15th day of March, 1971 for a period of 10 days. By letter dated March 16, 1971 Rudolph Sutton was notified that he was suspended until March 25, 1971 and that the Pupil Personnel Department would notify him of further disposition of his case in a letter sent by Oscar Gill acting for Fulton then Principal of Marion-Franklin High School.

21. No hearing was ever held in the Sutton case and on the 25th day of March upon returning to Marion-Franklin, Rudolph Sutton, and his mother who accompanied him, were advised that they would receive a letter in the mail concerning his case.

22. A letter dated that March 25, 1971 advised Mr. and Mrs. Sutton that their son was "to report to South High School for balance of 1970-71 school year. (adjustment)" The letter was signed by H. M. Williams then Director of Pupil Personnel. Plaintiff Rudolph Sutton has never requested a transfer from Marion-Franklin High School and no hearing or reason in writing were given to Sutton prior to said notice of transfer. Rudolph Sutton believes said suspension have become part of his permanent school record.

CLAIM OF TYRONE WASHINGTON

23. Mrs. Dollie Vance is the parent and natural guardian of Tyrone Washington, a minor 18 years of age on whose behalf she has filed suit.

24. Tyrone Washington on the 15th day of March, 1971 was a student at Marion-Franklin High School from which he was suspended for a period of ten days. In a letter dated March 16, 1971 the parents of Tyrone Washington were advised of the suspension and that "The Pupil Personnel Department of the Columbus Board of Education will notify you concerning a disposition of your case". No hearing was held prior to or subsequent to suspension.

25. By letter dated March 23, 1971 Tyrone Washington parents were notified that he had been summarily transferred to Mohawk Junior High School for the balance of the school year. No transfer had been requested and no hearing has been held concerning said transfer. Tyrone Washington believes said suspension and transfer has become a permanent part of his school record.

CLAIM OF SUSAN C. COOPER

26. Mrs. M. Katherine Cooper is the parent and natural guardian of Susan C. Cooper, a minor 16 years of age on whose behalf she has filed suit. Susan C. Cooper is a student at Marion-Franklin High School.

27. Susan Cooper was suspended from school without prior hearing for a period of ten days on March 15, 1971. On March 17, 1971 Mrs. Katherine Cooper received a letter from Oscar R. Dill acting on behalf of Fulton then principal of Marion-Franklin High School. No hearing was held prior to March 25, 1971 concerning said dismissal. By letter of March 16, 1971 Mrs. Cooper was advised of an 11:00 A.M. conference in Mr. Gill's office on the date of Susan's return. Susan Cooper believes said suspension will become part of her permanent record.

CLAIM OF DEBORAH KAY FOX

28. Mrs. Delores Young is the parent and natural guardian of Deborah Kay Fox, a minor 16 years of age on whose behalf she has filed suit. Deborah Kay Fox is

a student at Marion-Franklin High School in the 10th grade.

29. On the 10th day of March, 1971 Deborah Kay Fox was suspended from school without prior hearing for a period of ten days. On the 11th day of March, 1971 Mr. and Mrs. William Young were advised of the suspension of Deborah Kay Fox until Friday, March 19, 1971. On March 19, 1971 when she attempted to return to school, Deborah Kay Fox was suspended until March 29, 1971 or "until contacted by Mr. Robert Carter or his representative regarding your daughter's school placement". Miss Fox was advised personally by Mr. Kollmer, as agent for the principal that she was not to return to Marion-Franklin.

30. No hearing has ever been held concerning said suspension and neither Deborah Kay Fox or her parents have ever requested a transfer. Miss Fox believes the suspensions she has received have become a permanent part of her school record. Miss Fox was advised on March 29th that she has been transferred to South High School.

CLAIM OF CLARENCE L. BYARS

31. Mrs. Barbara Byars is the parent and natural guardian of Clarence L. Byars, a minor 16 years of age. Clarence L. Byars is in the 11th grade at Marion-Franklin High School.

32. On the 15th of March, 1971, Clarence L. Byars was suspended from school for a period of 3 days. On the 17th day of March, 1971 the parents of Clarence L. Byars were advised that Clarence was suspended and that he was to return to school on the 18th day of March, 1971. No hearing was held prior to his suspension and

Clarence Byars was not informed in writing of the reasons for his suspension until two days after it occurred and was never given an opportunity to contest said suspension. Clarence L. Byars believes said suspension will become part of his permanent school record.

CLAIM OF CARL SMITH

33. Mrs. Veda Smith is the parent and natural guardian of Carl Smith, a minor, 18 years of age on whose behalf she has filed suit. Carl Smith is a student in the 12th grade at Central High School. Carl Smith was suspended from Central High School by Calvin Park then principal, on the 26th day of February, 1971. Smith was advised of suspension on February 27, by letter. No definite date of return was given to the plaintiff Smith and he has been permitted to be in school only on one day since his suspension, March 9, 1971. Smith has been advised that he may not return to school until he talks to someone at the School Board, no hearing has been held in his case since suspension February 26, 1971. Carl Smith continues to be denied an opportunity to complete his schooling.

CLAIM OF BRUCE HARRIS

34. Freddie Robinson is the legal guardian and next friend of Bruce Harris on whose behalf he has filed suit. Bruce Harris is a minor, 18 years of age and a student in the 12th grade at Marion-Franklin High School.

35. On the 22nd day of March, 1971, Bruce Harris was suspended from Marion-Franklin High School by Oscar Gill, Assistant Principal. No hearing was held prior to his suspension and Harris was advised of the suspension by letter received March 24, 1971. The letter

advised Harris he was suspended until March 30, 1971 and that during the suspension "the Pupil Personnel Department of the Columbus School Board will review with you the contents of the letter of November 6, 1970".

36. When Harris returned to school on March 30, 1971, he was not readmitted and advised to make contact with the Pupil Personnel Department.

37. Harris remains out of school and believes said suspension will become part of his school record.

38. Defendants have acted pursuant to Section 3313.66 of the Ohio Revised Code, the Administrative Guide of the Columbus Public Schools, and the Policy Statement in Discipline of the Columbus Public Schools none of which provides any standards for the exercise of school administrators' disciplinary authority or fair proceedings through which a student has an opportunity to challenge the proposed disciplinary measure.

39. On information and belief, there are no other school rules or regulations relied upon by defendants as authorized aforesaid disciplinary actions.

40. Under color of State Law Defendants have acted intentionally, deliberately, and knowingly in violation of the First and Fourteenth Amendments to the Constitution of the United States and Title 42 U.S.C. Section 1983, rendering defendants liable to plaintiffs in law and equity.

CAUSE OF ACTION

41. Section 3313.66 of the Ohio Revised Code, Section 1010.04 of the Administrative Guide of the Columbus Public Schools, and the Columbus Policy Statement in Discipline provide no ascertainable standards of conduct for violation of which high school students may be suspended and expelled. Said statute, administrative Guide, and Policy Statement are unconstitutional because their vagueness and overbreadth deprive students of rights secured under the First and Fourteenth Amendments to the Constitution of the United States.

42. Section 3313.66 of the Ohio Revised Code Section 1010.04 of the Administrative Guide of the Columbus Public Schools, and the Columbus Policy Statement in Discipline authorize the suspension and expulsion of high school students without prior notice and a hearing with such minimal rights as a written statement of the reasons for the proposal discipline, the right to cross-examination, the right to pre-hearing discovery procedure, the right to submit relevant evidence and the right to be represented by counsel. Said statute, administrative Guide, and Policy Statement are unconstitutional because their lack of procedural safeguards deprives students of rights secured under the Fourteenth Amendments to the Constitution of the United States.

43. In the instant case defendants have effected suspensions, expulsions, and involuntary transfers of students without prior hearings which comport with minimal standards of due process. Defendants actions have been arbitrary, unequal and discriminatory in violation of plaintiffs rights secured by the First and Fourteenth Amendments to the Constitution of the United States.

PRAYER FOR RELIEF

44. Wherefore, plaintiffs respectfully pray that this Court:

(1) Assume jurisdiction of this cause and convene a three-judge district court to determine the controversy pursuant to Title 28 U.S.C. Section 2281.

(2) Enter a preliminary and a final order pursuant to Title 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that Section 3313.66 of the Ohio Revised Code is unconstitutional.

(3) Enter a preliminary and a final order pursuant to Title 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the administrative Guide and the Policy Statement on Discipline of the Columbus Public Schools insofar as they relate to suspensions and expulsions are unconstitutional.

(4) Issue a preliminary and a permanent injunction restraining the defendant, their successors in office, agents and employees from further enforcement of the unconstitutional provisions of their discipline policy and Section 3313.66 of the Ohio Revised Code.

(5) Issue a preliminary and a permanent injunction ordering that plaintiffs' school records be expunged of any notation of the aforementioned suspensions and that plaintiffs be allowed to make up any school work or tests occurring during their absence from school.

(6) Maintain jurisdiction of this cause until such time as defendants establish a hearing procedure in conformity with the requirements of the Fourteenth Amendment to the Constitution of the United States.

(7) Award plaintiffs their costs and disbursements incurred herein together with such further alternative relief as may seem just and equitable.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Filed September 12, 1973

(Title omitted in printing)
Civil Action No. 71-67

ANSWER ON BEHALF OF SUBSTITUTED PARTIES Norval Goss, James Furgason, James Boster, John Mulherin, John Ellis, Virginia Prentice, Thomas Moyer, Marilyn Redden, Marie Castleman, David Hamlar, Paul Langdon and Watson Walker.

1. Defendants, Norval Goss, James Furgason, James Boster, John Mulherin, John Ellis, Virginia Prentice, Thomas Moyer, Marilyn Redden, Marie Castleman, David Hamlar, Paul Langdon and Watson Walker, substituted herein as parties-defendant without abandoning the motion to dismiss filed in this cause on April 19, 1971, and renewed both at the commencement and conclusion of the trial conducted on July 16, 1973, and relying on all other motions made either orally or in writing as a result of the trial held on July 16, 1973, file the following as their answer.

2. Defendants named above admit that the action is denominated an action for declaratory and injunctive relief as alleged in paragraph one of the complaint and that the jurisdiction of this Court is invoked as alleged in paragraph two of the complaint, but specifically deny that the facts alleged or submitted support the assertion of such jurisdiction.

3. Defendants admit that a three-judge Court has been convened to hear the instant cause.

4. By way of further answer, defendants deny the allegations contained in paragraph four of the complaint.

5. Defendants admit that Norval Goss is the Director of the Department of Pupil Personnel of Columbus Public Schools; that James Furgason is presently Principal of Central High School; that James Boster is Principal of Marion-Franklin High School; that John Mulherin is Principal of McGuffey Junior High School; that John Ellis is presently Superintendent of Schools of the Columbus Public School System and that the Board of Education acting as a political subdivision manages the Columbus Public School System.

6. Defendants by way of further answer admit that Dwight Lopez, age nineteen (19), a student over the compulsory school attendance age, was suspended from Central High School on February 26, 1971, admit that a letter dated February 26, 1971, was forwarded to the parents of Dwight Lopez, which letter advised his parents that Dwight had been suspended for being involved in a school disruption and requested that a conference be arranged with his parents. Defendants further admit that a letter was sent to Dwight's parents advising them to appear on March 8, 1971, at 8:30 a.m. for a conference but that the parents did not appear and defendants communicated by phone with Mrs. Lopez and were informed by Mrs. Lopez that they were organizing. Defendants deny that Dwight Lopez was ever denied an opportunity to continue his education, and specifically aver that he did continue his education and graduated from high school in June of 1972. Defendants further specifically aver that the only problems Dwight Lopez had while in school were academic, that during the school year 1968-1969, Dwight Lopez only earned two-tenths of a credit toward graduation. Defendants deny the allegation that Dwight Lopez was not given a reason or reasons for his suspension, and aver that several attempts were made

to set up a conference with Dwight's parents to discuss the suspension, all without success. Defendants admit that Dwight Lopez was transferred to Adult Day High School on March 24, 1971, and specifically aver that he graduated as stated herein and that the suspension had no demonstrated affect on the completion of his education.

7. By way of further answer, defendants admit that Betty Jean Crome was temporarily suspended from McGuffey Junior High School on March 3, 1971, and aver that Betty Jean Crome returned to school on March 9, 1971; that a letter dated March 3, 1971, was forwarded to the parents of Betty Jean Crome advising them of the suspension, the period that it was to run and advising them to appear on March 8, 1971, at the school for a conference relating to the suspension. Defendants deny the allegations contained in paragraph 17 and 18 of the complaint, and aver that Betty Jean Crome continued her education on schedule and has completed the ninth grade by the end of the 1972-1973 school year and that the suspension had no demonstrated effect on her education.

8. Defendants admit that Rudolph Sutton, age nineteen (19), a student over the compulsory school attendance age, was suspended from Marion-Franklin High School on March 15, 1971, admit that a letter dated March 16, 1971, was forwarded to the parents of Rudolph Sutton advising them of the suspension, the period that it was to run, and the reasons for such suspension, the reasons given being that he was involved in a school disturbance and refused to follow the directions of the principal. Defendants admit that Rudolph Sutton was transferred to South High School, deny the allegation that he was not advised of the reasons for his suspension,

and specifically aver that Rudolph Sutton and his father were present at the disturbance which led to his suspension and further aver that Rudolph Sutton graduated on schedule from high school in June of 1971, and that such suspension had no effect on the obtaining or completion of his education.

9. By way of further answer, defendants admit that Tyrone Washington was temporarily suspended from Marion-Franklin High School on March 15, 1971, such suspension to run until March 25, 1917, admit that a letter dated March 16, 1971, was forwarded to the parents of Tyrone Washington, which letter notified his parents of the suspension, the term of the suspension and gave as reasons his involvement in a school disturbance and his direct refusal to follow the directions of the school principal. Defendants further admit that Tyrone Washington was transferred to East High School and graduated on schedule from high school in June of 1971. Defendants further specifically aver that the suspension had no demonstrated effect on his obtaining or completing his education.

10. By way of further answer, defendants admit that Susan Cooper was temporarily suspended from Marion-Franklin High School on March 15, 1971, admit that a letter dated March 16, 1971, was forwarded to the parents of Susan Cooper advising them of the suspension, which suspension was to run until March 25, 1971, and advising them of the reasons for such suspension namely, her being involved in a disturbance at school and her showing disrespect for the principal during the disturbance which occurred at the school on March 15, 1917. Defendants further specifically aver that Susan Cooper continued with her education at Marion-Franklin High School, graduated from high school on schedule in

June of 1972 and that the temporary suspension admitted herein had no demonstrated effect on Susan Cooper's obtaining or completing her education.

11. Further answering, defendants admit that Deborah Kay Fox was temporarily suspended from Marion-Franklin High School on March 10, 1971, with such suspension to run until March 19, 1971, admit that a letter dated March 10, 1971, was forwarded to her parents advising them of the suspension, the term that it was to run and reasons, namely, engaging in defiant conduct and showing disrespect for the principal, admit that she was resuspended on March 19, 1971, as a result of conduct in the assistant principal's office, that one of her parents was present with her on March 19, 1971, that a letter dated March 19, 1971, was forwarded to her parents advising them of the resuspension and defendants further aver that both the suspension of March 10, 1971 and March 19, 1971, was discussed with Deborah Fox's parents. Defendants further admit that Deborah K. Fox was transferred to South High School, but aver that such placement was first discussed with Lorene Howard, field counselor for the Ohio Youth Commission, since Deborah K. Fox was under her supervision. Defendants further specifically aver that Deborah Fox graduated from high school in January of 1973, that such graduation was ahead of schedule and that the suspensions admitted herein had no demonstrated effect on her obtaining or completing her education.

12. By way of further answer, defendants admit that Clarence Byras was temporarily suspended from Marion-Franklin High School on March 15, 1971, admit that a letter dated March 15, 1971, was forwarded to the parents of Clarence Byras, advising them of the suspension, that the suspension was to run until March 18, 1971, and

giving the reasons for such suspension, namely, his being involved in a school disruption, his refusal to go to classes and his demonstrating disrespect for the principal. Defendants further specifically aver that Clarence Byras continued with his education at Marion-Franklin High School, graduated on schedule from high school in June of 1972, and that the suspension admitted herein had no effect on his obtaining or completing his education.

13. Further answering, defendants admit that Carl Smith, age eighteen (18), a student over the compulsory school attendance age was suspended from Central High School on March 1, 1971, that a letter dated March 1, 1971, was forwarded to his parents advising them of the suspension, but aver that phone calls were made to his parents on March 2, 3 and 4, 1971, to arrange a conference concerning the suspension, that a conference was arranged for March 5, 1971, and defendants were advised that Carl and his mother were on their way to keep the appointment but never appeared. Defendants deny that Carl Smith was ever denied an opportunity to complete his education, that Carl Smith graduated from high school in June of 1972, having had academic problems prior to his suspension. Defendants further specifically aver that the suspension has had no demonstrated effect on Carl Smith obtaining or completing his education.

14. By way of further answer, defendants admit that Bruce Harris, age nineteen (19), a student over the compulsory school attendance age, was temporarily suspended from Marion-Franklin High School on March 23, 1971, admit that a letter dated March 23, 1971, was forwarded to the parents of Bruce Harris, advising them of the suspension, the term of the suspension, namely March 30, 1971, and the reasons, namely, his being involved in the disruption of an assembly and walking out of the assembly after the principal warned that such conduct would result in suspension. Defendants further aver that Bruce Harris graduated from high school in June of 1972, that such graduation was delayed due to previous academic problems, and that this suspension admitted herein had no demonstrated effect on Bruce Harris obtaining or completing his education.

15. Defendants by way of further answer admit that the provisions of Section 3313.66, Revised Code, proscribes the procedural conduct of defendants, and deny each and every other allegation contained in the complaint.

SECOND DEFENSE

16. Defendants aver that the complaint in its present form fails to state a claim cognizable under Title 42, Section 1983, fails to state a claim demonstrating that any single plaintiff has been denied a right of liberty or property guaranteed by the Fourteenth Amendment to the United States Constitution; that the provisions of Section 3313.66, Revised Code, are procedural in nature and do not proscribe or prescribe conduct engaged in by plaintiffs, but instead act as a limitation on the inherent power possessed by defendants, and that given the conduct engaged in by plaintiffs as alleged herein, given the temporary character of the action taken by defendants no substantial question with respect to the violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution exists in this case.

THIRD DEFENSE

17. Defendants aver that each plaintiff had an adequate administrative remedy available to him or her

through review of each temporary suspension by way of an appeal pursuant to Chapter 2506 of the Revised Code, that given the facts presented and the type of suspension involved such remedy would comport with any due process requirements, if the Due Process Clause was involved, and should have been pursued prior to bringing an action under Title 42, Section 1983.

FOURTH DEFENSE

18. Defendants aver that before the full procedural protection of the Due Process Clause to the Fourteenth Amendment of the United States Constitution does apply it must be shown that a right of liberty or property is involved and that a plaintiff or plaintiffs face deprivation of the right; that no right of liberty or property has been shown to be sharply implicated by reason of the operation of Section 3313.66, Revised Code, that the plaintiffs in the instant action have not been shown to be condemned to suffer a grievous loss by reason of the operation of Section 3313.66, Revised Code, and that by reason of the fact that no right of liberty or property is sharply implicated in the instant action and plaintiffs are not condemned to suffer grievous loss by reason of the operation of Section 3313.66, Revised Code, the procedural protections required by the Due Process Clause to the Fourteenth Amendment are not required and no process is due.

FIFTH DEFENSE

19. Defendants aver that education is not a fundamental right guaranteed by the United States Constitution, that education is a service and function provided by the State, that the Legislature of the State of Ohio has legislated with respect to the function and service of education and has determined that students may partici-

pate in the service of education subject to the limited power of discipline granted to the principal by Section 3313.66, Revised Code, that a legislative determination has been made in the formulation and development of the service, that the grant of limited power to the principal to discipline, as provided in Section 3313.66, Revised Code, will not damage or injure participation in the service or function and that further refinement or limitation of the power granted to the principal by Section 3313.66, Revised Code, is a legislative and not a judicial function.

SIXTH DEFENSE

20. Defendants aver that the Board of Education of the School District of the City of Columbus and the individual members named defendant who comprise the Board of Education are not persons subject to the provisions of Title 42, Section 1983, where equitable relief is sought, as in the instant case and, therefore, defendant, the Columbus Board of Education and those individual members named defendant who comprise the Board of Education, are not proper parties defendant and should be dismissed from the action.

SEVENTH DEFENSE

21. Defendants aver that the facts alleged and produced have not demonstrated that there occurs by reason of the operation of Section 3313.66, Revised Code, a constitutionally recognized stigmatization such as would entitle any plaintiff or plaintiffs as a whole to due process within the meaning of the Due Process Clause to the Fourteenth Amendment prior to the imposition of a ten-day suspension pursuant to Section 3313.66, Revised Code.

Wherefore, the defendants and each of them demand judgment dismissing the complaint, with costs.

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Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-898

NORVAL GOSS, ET AL.,
APPELLANTS,
v.
EILEEN LOPEZ, ETC., ET AL.,
APPELLEES.

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

Appellees' Motion To Affirm The Judgment of The District Court

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In the
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OCTOBER TERM, 1973

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NORVAL GOSS, ET AL.,
APPELLANTS,

v.

EILEEN LOPEZ, ETC., ET AL.,
APPELLEES.

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

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Appellees' Motion To Affirm The Judgment of The District Court

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The Appellees in the above entitled case hereby move to affirm on the ground that the questions presented are so insubstantial as to not need further argument.

Opinion Below

The District Court's opinion has yet to be reported. The Appellees therefore attach to this motion a copy of the order and accompanying opinion and designate it Appendix A.

Statute Involved

The Statute challenged by this action, and held by the Court below to violate the Due Process Rights of suspended students, is Section 3313.66 of the Ohio Revised Code. It states:

> § 3313.66 Suspension or expulsion.
> The superintendent of schools of a city or exempt village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school for not more than ten days. Such superintendent or executive head may expel a pupil from school. Such superintendent, executive head, or principal shall within twenty-four hours after the time of expulsion or suspension notify the parent or guardian of the child, and the clerk of the board of education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent or guardian or custodian of a pupil so expelled may appeal such action to the board of education at any meeting of the board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester.

Statement of the Case

During the spring of 1971, the Columbus, Ohio, City School System found itself in the throes of racial tension. This tension resulted in sporadic problems of various sorts. The response of several school principals was to engage in the wholesale suspension of students.[1] These suspensions were neither preceded *nor* followed by *any* form of hearing or conference designed to determine their propriety.[2] Given the wholesale nature of these suspensions it was inevitable that many children had their education terminated by the mistake of school officials. Several of the named Plaintiffs so testified.[3]

In response to this situation the Appellees filed suit alleging that these suspensions violated the Procedural Due Process requirements of the Fourteenth Amendment to the United States Constitution. More specifically it was alleged that 42 U.S.C. 1983 was violated. Nine named Plaintiffs sued on behalf of a class of Columbus school students who had been suspended in a like manner. Section 3313.66 was challenged directly because it was manifest that in the absence of the statute no authority existed to exclude children from school,[4] that the statute specifically

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[1] Although the Appellees never were certain of the exact number of children suspended, one indication is given by the testimony of Dwight Lopez referred to in the Court's opinion (Appendix, p. 20). Lopez testified that he personally knew more than seventy-five students suspended from one school on one given day.

[2] See Appendix A, pages "26-39" some students did have subsequent conferences (usually ten (10) days or more after the termination of schooling) which were held not to elicit the truth but to determine future goals and placement. (Appendix A, pp. 23-24).

[3] See Appendix A, pp. 26-39.

[4] See e.g., § 3313.64 of the Ohio Revised Code which mandates a free education for each child between the ages of 6 and 21 and § 3321.01 which prescribes compulsory education. See also the District Court's discussion (Appendix A, p. 52, n.14).

permitted suspensions without any hearing and expulsions without any prior hearings, and that in fact, the statute was relied upon by the Columbus school officials.[5] The Plaintiffs below sought a declaration of the section's unconstitutionality, an injunction against its enforcement, and expungement of any reference to the suspensions contained in school files.

The Court, after trial, declared section 3313.66 and Columbus Regulations in effect at the time of the suspensions unconstitutional on the grounds that they failed to provide for a hearing prior to suspension. The Court further ordered expungement as requested. It is this decision which is presently being appealed.

Issue Presented

Was the Court below incorrect when it held that the exclusion of Ohio students from school for up to ten (10) days without *any* form of fact-finding hearing or conference was a violation of the Due Process guarantees of the Fourteenth Amendment to the United States Constitution?

Argument

Several matters should be noted at the outset with respect to the District Court's holding. First, contrary to assertions by Appellants the District Court did not rule that a three (3) day suspension is constitutionally permissible while a ten (10) day suspension (without a prior hearing) is unconstitutional. The Court did rule rather that a prior hearing is always required except when there are extraordinary circumstances. When extraordinary circumstances exist, a student may be suspended without a

[5] See, e.g., § 1010.04 of the Administrative Guide to the Columbus Public Schools set out in the Court's opinion (Appendix A, p. 21).

prior hearing but must be given a subsequent hearing within three days of the exclusion.[6] This holding and this perspective merely places school suspensions into the mainstream of this Court's Due Process decisions, as will be discussed, below.

Secondly, the District Court's discussion of the procedures necessary to meet Due Process provides the school district with maximum flexibility. Although the issue below was whether *any* hearing was required rather than what form a hearing should take, the Court indicated its belief (in dicta) that procedures could be informal so long as an inquiry into the correctness of the suspension was made.[7]

It should further be noted that, contrary to assertions in Appellants' Jurisdictional Statement, the District Court did fully recognize that a long term expulsion might require more stringent protections.[8] However, as the Court correctly held, this should not disturb the root requirement of a hearing of some form prior to a suspension.

A. The Court Below Correctly Characterized Education As An Interest Protected By The Due Process Clause Of The Constitution.

The Appellants' primary argument in their Jurisdictional Statement is that this Court's opinion in *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2 16 (1973) is in conflict with the District Court's holding that the right to education is an interest protected by the Due Process Clause. This argument fails to appreciate the issues which this Court grappled with in *Rodriguez*.

[6] Appendix A, p. 60.
[7] See discussion, Appendix A, p. 61.
[8] See discussion, Appendix A, p. 58.

The lower Court understood that this Court was concerned with articulating an equal protection standard in *Rodriguez*. The ultimate finding that education was not a "fundamental interest" merely precluded strict scrutiny under relevant equal protection precedent e.g. *Dunn* v. *Blumstein*, 405 U.S. 330, 92 S.Ct. 995 (1972); *Eisenstadt* v. *Baird*, 405 U.S. 438, 92 S.Ct. 1029 (1972). As the Court below correctly ruled, a finding of fundamentality or non-fundamentality had little if anything to do with the question of what interests are protected by the Due Process Clause of the Constitution. One need only examine the interests which this Court has held require protection prior to state interference to realize that "fundamentality" is not required to invoke due process protection, e.g. *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S.Ct. 1011 (1970) (deprivation of welfare benefits); *Bell* v. *Burson*, 402 U.S. 535 91 S.Ct. 1586 (1971) (suspension of drivers license); *Wisconsin* v. *Constantineau*, 400 U.S. 433, 91 S.Ct. 507 (1971) (loss of reputation). As this Court's decision in *Board of Regents of State College* v. *Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972) makes clear the search is for a "protected interest" as opposed to a "fundamental interest," 408 U.S. 569-570, 92 S.Ct. at 2705; this in turn requires a finding that the interest involved is either a liberty or property interest within the meaning of the Fourteenth Amendment.

The Court below, in primary reliance upon *Meyer* v. *Nebraska*, 262 U.S. 390, 43 S.Ct. 625 (1923), ruled that educational interests come within the concept of liberty; as this Court stated in *Meyer:*

> While this court has not attempted to define with exactness the liberty this guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt,

> it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, *to acquire useful knowledge*, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. 262 U.S. at 399 (emphasis added).

This Court's frequent recitation of this passage from *Meyer* underscores its continuing vitality. See, e.g., *Roth*, supra 408 U.S. at 572. Moreover this Court in *Bolling* v. *Sharpe*, 347 U.S. 497, 499, 74 S.Ct. 693, 694 (1954), expressly held again that education was a liberty subject to due process protections. See also *Goldberg* v. *Kelly*, 397 U.S. 254, 262, n.9, 90 S.Ct. 1011, 1017 n.9 (1970) citing approvingly a similar holding in *Dixon* v. *Alabama State Board of Education*, 294 F2 150 (5th Cir. 1961) in the school expulsion context. It is thus manifest that the District Court was merely following this Court's well established precedent in holding education to be a "liberty" subject to due process protection. It is correct, as the District Court stated, that:

> No court faced with the question has held the right to an education is not within the concept of liberty (Appendix, p. 55.)

Additionally, it seems clear under the tests enunciated in *Roth, supra*, that a student in Ohio has a "property" right to education as well.[9] As this Court stated in *Roth, supra* at 577

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[9] Contrary to Appellants' assertions the trial Court did not reject this view. Rather, it merely stated in a footnote that education is not a traditional property. The Court went on to note that "However, governmental entitlements in our modern society often take on the incidents of property". Appendix, p. 54.

> Property interests, are created and their dimensions are defined by existing rules or understanding that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

In Ohio, as the District Court noted, there is a clear statutory right to an education. Section 3313.64 of the Ohio Revised Code provides that each child between the ages of six (6) and twenty-one (21) is entitled to a free education. § 3321.01 compels attendance through age 16. An elaborate statutory scheme is established to deliver educational services to the children of Ohio (Title 33 Ohio Revised Statutes). It is obvious that the statutory entitlement to education in Ohio is at least as strong as the entitlement to welfare ruled upon in *Goldberg, supra,* and referred to in *Roth, supra* in describing what constitutes "property."

Thus whether one characterizes education as "liberty" as the lower Court did, or as "property" it is clear that education in Ohio is a protected interest. Under this Court's holdings, followed by the District Court, the State cannot deprive a citizen of a protected interest without Due Process of law. Yet this is precisely what was done to the Appellees in the instant case and what the District Court's ruling redresses. Such is clearly correct, perfectly consistent with *Rodriguez,* and requires no reconsideration by this high Court.

B. A Deprivation Of A Protected Interest, Such As Education, Must Be Preceded By A Hearing, Absent Extraordinary Circumstances.

It is instructive to remember just what the trial Court held with respect to a required hearing; as this Court's

cases are discussed it will become evident that the lower Court's decision is in the mainstream of this Court's pronouncements.

The District Court ruled that:

> Formality and procedural requisite of a hearing vary with the relative importance of interests involved and the nature of the subsequent proceedings; *Boddie* at 378. But the constitutional requirement of opportunity for *some* form of hearing before deprivation of a protected interest, of course, does not depend on such a narrow balancing process. (Appendix, p. 56).

This Court has been absolutely consistent in requiring a hearing prior to an invasion of a protected interest. As this Court stated in *Roth, supra,*

> when protected interests are implicated, the right to some kind of prior hearing is paramount (footnote omitted) 408 U.S. at 569-570.

In *Boddie* v. *Connecticut,* 401 U.S. 371, 379, 91 S.Ct. 780, 786 (1971) this Court characterized a prior hearing as a "root requirement" of Due Process.

In *Bell* v. *Burson,* 402 U.S. 535, 542, 91 S.Ct. 1586, 1591 (1971), this Court, in requiring a hearing prior to the suspension of a drivers license, stated:

> While "(M)any controversies have raged about . . . the Due Process Cuase" *ibid.,* it is fundamental that except in emergency situations (and this is not one) due process requires that when a state seeks to terminate an interest such as that here involved, it must afford "Notice and opportunity for hearing appro-

> priate to the nature of the case" *before* the termination becomes effective. Ibid. *Opp Cotton Mills* v. *Administrator*, 312 U.S. at 152-156, 61 S.Ct. at 536-538 (footnote omitted.)

See also such diverse cases as *Mullane* v. *Central Hanover Bank and Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 656 (1950) "The Due Process Clause — at a minimum — require(s) — adjudication be precedent by notice and opportunity for hearing"; *Armstrong* v. *Manzo*, 380 U.S. 545, 550, 85 S.Ct. 1187, 1190 (1965); and *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S.Ct. 1011 (1970).

Thus this Court's consistent position has thus been that a hearing of some kind prior to an invasion of a protected interest is required unless "extraordinary circumstances" require summary action.

The District Court in this case was properly aware of the extraordinary circumstance doctrine[10] and properly carved out an exception to the prior hearing requirement in accordance with the realities and needs of school discipline. The District Court stated that:

> "All courts which have considered the problem have recognized the authority of school administrators to suspend students for a short period without a hearing if an emergency situation requires the removal of the disruptive student from the school to restore an academic atmosphere."[11]

The Court then provided that school officials could cause the "immediate removal of a student whose conduct

[10] See, e.g., *Central Union Trust Co.* v. *Garvan*, 254 U.S. 554, 41 S.Ct. 214 (1921); *Phillips* v. *Commissioner of IRS*, 283 U.S. 589, 51 S.Ct. 608 (1931); *Ewing* v. *Mytinger & Casselberry Inc.*, 339 U.S. 594, 70 S.Ct. 870 (1950).

[11] Appendix, p. 59.

disrupts the academic atmosphere of the school, endangers fellow students, teachers or school officials or damages property."[12] However, an informal fact-finding hearing must follow within 72 hours.

Thus the District Court's ruling on this central point of law is once again consistent with this Court's rulings.

C. Contrary To Appellants' Contention, This Court Has Never Required Invasion Of A Protected Interest To Be Coupled With "Grievous Loss" In Order For Due Process To Attach.

The Appellants advance the argument that the invasion of a protected interest does not require prior procedural safeguards unless "grievous loss" is suffered. In advancing this argument the Appellants (a) contradict several recent holdings of this Court, (b) make an argument that would propel this and other courts into the impossibly subjective determination of what constitutes a "grievous loss," (c) cite cases which really do not stand for the proposition advanced, (d) ignore this Court's holding that the weighing process between extent of loss and inconvenience to the State properly goes to the *form* of the hearing and not to its existence, and, (e) ignore the express findings made by the Court below on unrefuted evidence that a school suspension, irrespective of length, has the possibility of causing substantial harm.

In *Fuentes* v. *Shevin*, 407 U.S. 67, 92 S.Ct. 1983 (1972) this Court, in an observation which has special poignancy in the immediate case, stated:

> The Fourteenth Amendment draws no bright lines around three-day, 10-day or 50-day deprivations of

[12] Appendix, p. 60.

> property. Any significant taking of property by the State is within the purview of the Due Process Clause. While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right to a prior hearing of some kind. 407 U.S. at 86.

This language is virtually identical to that which the District Court used to strike down the Ohio statute which permitted a suspension of education for up to ten days without a hearing. As the District Court stated:

> It is important to remember that even though the interference with the liberty of a right to education is limited, the student's right to be treated with procedural fairness prior to a deprivation of the right to an education is not lost. The magnitude of the deprivation affects the formality and comprehensiveness of the due process safeguards: it does not affect the basic fact that these safeguards shield the student from arbitrary or capricious interference with his right to education. (Appendix, p. 55.)

This Court in *Fuentes* rejected the argument that the holdings in *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820 (1969) or *Goldberg, supra,* (or, of course, other cases) were predicated on a finding of "grievous loss." As this Court stated at 407 U.S. 67 at 88:

> Both decisions were in the mainstream of past cases, having little or nothing to do with the absolute "necessities" of life but establishing that due process requires an opportunity for a hearing before a deprivation of property takes effect.

In *Roth, supra,* despite the exhaustiveness of the opinion, no reference is made to the concept of "grievous loss." Very understandably this Court has rejected such a concept as a general principal in the determination of whether a prior hearing is required (as opposed to a determination of the elements of a prior hearing).

The Due Process standard urged by Appellants would inject an impossible subjectivity into Due Process law. This Court would be faced with determining on a case by case basis whether an interference with a given liberty or property was "grievous" or not. It would be virtually impossible to establish standards, and thus a state would have no ability to predict just what interference required a prior hearing and what did not. This Court's opinions in *Fuentes* and *Roth* avoid this result.

In seeking to counter this Court's general pronouncements on this subject, the Appellants have taken a one-sentence quotation from a concurring opinion by Justice Frankfurter concerning "grievous loss" and have attempted to make it an integral element of Due Process. Analysis of the three cases cited by the Appellants indicates that the phrase has been a rare tool used only sparingly by this Court in a few limited situations in which a violation of liberty was thought to be in doubt. There is no such doubt in the present case. It is unquestioned that a whole class of school children were completely excluded from their right to education for definite periods of time.

In *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 168, 71 S.Ct. 624, 646 (1951), Justice Frankfurter, in a concurring opinion, first used the grievous loss language. In that case, in the context used, the issue was whether the government's act was a significant violation of the liberty of an untainted reputation (Plaintiff organization accused of being Communist.). Given the necessarily subjective determination of "taint," grievous

loss became a useful tool to determine whether any liberty was invaded.

Likewise in *Hannah* v. *Larche,* 363 U.S. 420, 80 S.Ct. 1502 (1960), the second case cited by Appellants, the issue was whether the government's act was likely to taint the reputation of the Plaintiffs (accusation of racism). The same considerations involved in *Joint Anti-Fascist Refugee Committee, supra,* made the quotation a useful tool.

Although the final case cited by the Appellants did not involve reputation, it did involve the same unique issue of whether any meaningful liberty had in fact been invaded. This final case was *Morrissey* v. *Brewer,* 408 U.S. 471, 92 S.Ct. 2593 (1973). At the point in the decision at which the quotation appears this Court was concerned with whether a parolee could truly be said to have "liberty" since he was nominally in custody. There, this Court appeared to use the grievous loss tool to determine whether the State's revocation of parole effectively changed the life of one nominally in custody. Upon finding harm the Court was able to say:

> By whatever name, the liberty is valuable and must be seen within the protection of the Fourteenth Amendment. (92 S.Ct. at 2601)

In sum, the grievous loss quotation has been a unique tool to assist this Court in a limited number of cases in which there was doubt about the very existence of a violation of liberty. In the instant case, in which a flat exclusion from the right to education is a given, such a tool is manifestly unnecessary.

The District Court's decision properly weighed the extent of the harm against the governmental interest in determining what the *form* of the hearing should be—rather than in determining whether a prior hearing was required. This Court has long held that the weighing process concerns the form of the hearing, not its existence. See, e.g. *Cafeteria & Restaurant Workers* v. *McElroy,* 367 U.S. 886, 81 S.Ct. 1743 (1961); *Bo[illegible]die* v. *Connecticut,* 401 U.S. 371, 378, and *Roth, supra,* in which it was stated:

> And a weighing process has long been a part of any determination of the *form* of hearing required in particular situations by procedural due process. 408 U.S. at 570.

In a footnote to this quote, this Court made clear just when the weighing process takes effect. This Court stated:

> The constitutional requirement of opportunity for *some* form of hearing before deprivation of a protected interest, of course, does not depend upon such a narrow balancing process. 408 U.S. at 570-71 N. 8.

It is clear that the District Court's approach meets this Court's requirements of weighing as they apply to the form of a hearing in a given situation.

Finally, if some minimum quantum of harm is required to invoke the procedural protections of Due Process, the record provides substantial unrefuted evidence of such. As the opinion of the District Court notes, Norval Goss, Director of Pupil Personnel of the Columbus Public Schools, testified that academic penalties accompany a suspension and that any absence may have negative educational effects. Several of the named Plaintiffs (and pre-

sumably other members of the class) had notations entered on their permanent records concerning the fact of suspension. Further, as the Court noted, several prominent Ohio psychologists testified concerning the real possibility of substantial harm to a suspended student. (Appendix, p. 40). The testimony indicated that some of these potential harms are more likely when a student has not been given an opportunity to avoid capricious and arbitrary action by some form of a prior hearing. This testimony, confirmed by the testimony of several other witnesses, including named Plaintiffs, added to the testimony of Norval Goss, certainly establishes a real and potentially substantial injury which can result from a suspension regardless of its length. Such evidence clearly meets any threshold requirement of injury.

The Appellants argue that this case is in conflict with other decisions, and that therefore plenary treatment should be accorded to it. Although it cannot be denied that there are some decisions which have ruled differently, the trend is toward requiring some form of informal fact-finding hearing prior to a suspension, absent an emergency situation. See, e.g., *Vail* v. *Board of Education of Portsmouth School District*, 354 F. Supp. 592 (D.N.H. 1973) and *Black Students of N.Ft. Meyers Jr.-Sr. High School* v. *Williams*, 335 F. Supp. 820 *aff'd. per curiam* 470 F2 957 (5th Cir. 1972). The *Black Students* decision overruled by implication *Banks* v. *Board of Public Instruction*, 314 F. Supp. 285, vacated, 401 U.S. 988 (1971), aff'd. per curiam, 450 F.2d 1103 (1971), a case heavily relied upon by the Appellants. It is submitted that this is a manifestation that the trend is toward requiring an informal hearing prior to a suspension absent an emergency. The present case, paying heed to this Court's pronouncements, merely fits within this trend.

Conclusion

The Court below struck down a statute and regulations which permitted students to be suspended from school without either a prior hearing or subsequent hearing. The Court below went out of its way to indicate that a hearing could be informal, so long as it was reasonably designed to elicit the truth. In so ruling the lower Court merely was applying this Court's ample precedent that a hearing must precede the deprivation of a liberty by the State. Full scale argument is surely not needed to confirm the correctness of this rather limited ruling. This Court should summarily affirm the decision below.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action 71-67

EILEEN LOPEZ, et al.

PLAINTIFFS

v.

HERBERT M. WILLIAMS, et al.

DEFENDANTS

ORDER

For the reasons and on the grounds which more fully appear in the Opinion of this Court filed simultaneously herewith, it is concluded that plaintiffs were denied due process of law because they were suspended without adequate hearing. It is further concluded that the statute and regulation challenged are not unconstitutionally vague and overbroad.

The Court DECLARES that Section 3313.66, Ohio Revised Code and the regulations adopted by the Columbus Public Schools pursuant thereto which were in force at the time of plaintiffs' suspensions are unconstitutional, in that they provide for suspension from the Columbus Public Schools without first affording the student due process of law.

It is hereby ORDERED that the defendants delete all reference to the suspensions and disciplinary transfers of plaintiffs from the records of the Columbus Public Schools.

BY ORDER OF THE COURT
JOHN W. PECK
Judge, United States Court of
Appeals for the Sixth Circuit
JOSEPH P. KINNEARY
Chief Judge
United States District Court
CARL B. RUBIN
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action 71-67

EILEEN LOPEZ, et al.

PLAINTIFFS

v.

HERBERT M. WILLIAMS, et al.

DEFENDANTS

OPINION

Before John W. Peck, Judge, United States Court of Appeals for the Sixth Circuit; Joseph P. Kinneary, Chief Judge, United States District Court; and Carl B. Rubin, United States District Judge.

Kinneary, Chief Judge. This matter is before the Court on plaintiffs' motion for judgment on the pleadings under the provision of Rule 12(c) of the Federal Rules of Civil Procedure.

This is an action for injunctive and declaratory relief arising out of the suspension of the nine plaintiffs from Columbus Public School System in February and March, 1971.

A Three-Judge Court was convened under the provisions of Title 28, United States Code, Section 2281. *Calloway* v. *Briggs,* 443 F. 2d 296 (6th Cir. 1971).

The Court has jurisdiction under the provisions of Title 28, United States Code, §§1343(3), 2201 and 2202. Plaintiffs' claims for relief are alleged under the provisions of Title 42, United States Code, Section 1983.

Plaintiffs challenge the constitutionality of §3313.66 of the Ohio Revised Code and §1010.04 of the Administrative Guide of the Columbus Public Schools, and the Columbus Public School Policy Statement on Discipline. They allege two claims for relief. First, suspension without the minimal due process safeguards of notice and

prior hearing is violative of the Fourteenth Amendment to the Constitution of the United States because it denies students an education, an important public right, without due process of law. Second, the statute and regulation are unconstitutionally vague and overbroad because they provide no ascertainable standard for acceptable conduct.

Upon the consent of all parties and the other members of the panel, the factual issues in this case were tried before the Honorable Joseph P. Kinneary, Chief Judge, United States District Court for the Southern District of Ohio, *See, Rosado* v. *Wyman*, 397 U.S. 397, 403 (1970) who made the following findings of fact which are adopted fully by the Three-Judge District Court.

FINDINGS OF FACT

The plaintiffs presented evidence relating to the dismissals from school of Dwight Lopez, Betty Jane Crome, Susan Cooper, and Deborah Fox. In addition, Phillip Fulton, principal of Marion-Franklin High School during the 1970-1971 school year testified by deposition concerning the suspensions from Marion-Franklin High School of plaintiffs Tyrone Washington, Clarence Byars, Rudolph Sutton and Bruce Harris. There was no evidence presented to the Court concerning the suspension from the Columbus Public School System of the plaintiff Carl Smith.

Plaintiffs seek to maintain a class action. Phillip Fulton, principal of Marion-Franklin High School in February-April, 1971, testified on deposition that on or about March 15, 1971 fourteen students were recommended for suspension from his school. Dwight Lopez, a student at Central High School testified that he personally knew more than 75 students who were suspended from Central High School on February 26, 1971. Doctor John Ellis, Superintendant of Columbus Public Schools, testified on deposition that the Department of Pupil Personnel keeps some records on suspensions, but he did not have them

available at the time of his deposition. No other evidence relating to the number of students suspended in February-April, 1971 was received by the Court.

Section 3313.66, Ohio Revised Code provides, in relevant part, that:

> . . . the principal of a public school may suspend a pupil from school for not more than 10 days. . . . Such . . . principal shall within 24 hours after the time of expulsion or suspension, notify the parent or guardian of the child, and the clerk of the Board of Education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent, or guardian, or custodian of a pupil so expelled may appeal such action to the Board of Education at any meeting of the Board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the Board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The Board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester.

Section 1010.04 of the Administrative Guide to the Columbus Public Schools (January 2, 1973) provides that:

> Pupils may be suspended or expelled from school in accordance with the provision of §3313.66 of the Revised Code.

The parties introduced into evidence three memorandums from the Department of Pupil Personnel of the Columbus Public Schools on the subject of suspension of students from school. The earliest memorandum is dated August 16, 1971.[1] None of the memorandums were in effect

[1] The memorandums are dated August 16, 1971; February 21, 1973; and July 10, 1973. The memorandum of August 16, 1971

at the time plaintiffs were suspended from the Columbus Public Schools.

Phillip Fulton, principal of Marion-Franklin High School during the 1970-1971 academic year, testified that the following procedure was in effect at the time of the suspensions which are the basis of the present action:

> Basically, the assistant principals are the disciplinarians. They held the discipline responsibility in a given school. The majority of times, the incident does

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provides, in relevant part, with regard to suspension that when a principal suspends a student he should:

"1. Notify him of the exact reason and the term of the suspension.
2. Notify the parent, by phone if possible, and explain the suspension.
3. Within 24 hours, write the parent a letter including the reason for the suspension.
4. Send a carbon copy of this letter to Pupil Personnel. On cases where you expect difficulty, or on cases which are not retained, be sure to include a brief summary of the incident along with any other information which may be of help.
5. Be ready and available for a conference if one is requested by the parent.

The length and term of suspension are left at the discretion of the principal. Be sure the students and parents know the exact date when the suspension ends."

The memorandum of February 21, 1973 provides, in relevant part, with regard to suspension that when a principal suspends a student he should:

"1. Notify him [the student] of the exact reason and term of the suspension.
2. Notify the parent, by phone if possible, and explain the suspension.
3. Within 24 hours, write the parent a letter including the reason for the suspension and the date the student is to return to school.
4. Send a carbon copy of this letter to pupil personnel. On cases where you expect difficulty, or on cases which are not routine, be sure to include a brief summary of the incident along with any other information which may be of help.

The length and term of a suspension are left at the discretion of the principal. Be sure the students and parents know the exact date when the suspension ends."

> occur with an administrator. It occurs in a situation where a teacher refers it to administration. . . .
>
> The teacher would send to the office in written form, it was to be written. We had a form that we followed indicating the incident, what had happened, and this was brought to the office at the time the student was brought to the office. The administrator then would go over the incident as written or as dictated by the teacher with the student. The student then would be given an opportunity, if the student didn't agree with the way it happened, then he would send back for the teacher and bring the teacher in who if we have some reason to see if there is a discrepancy. We then asked the teacher to interpret what he has written for us. If there is a large discrepancy where a student would deny it and the teacher would confirm it, then we would react upon this information according to what the teacher tells us. Then if it is deemed that there is a suspension, you follow the procedure that I have already formulated. You call the parent first and then send the student home. Again, if we can't find the parent, we keep the student until his normal school day is over. So they are retained until their school day is completed. The parent, if he can be contacted in the meantime, then would be informed of the situation. This would be followed by a letter stating again that we would discuss but including also the time of the appointment, if it has been prearranged. If not, the parent may get in tomorrow. They might say that they can get in tonight and maybe have time to see the administrator and that would be set up at that time. . . .
>
> . . .
>
> [At the conference] [t]he problem, the individual,

we talk about their school record. We get their entire school record. We talk about their academic problems, if they exist. We talk about their potential. We talk about their goals. It is a conference to remedy the problem and you try to find a solution so that the student is successful in his schooling. . . .

[It is not a conference to verify the facts supporting the suspension.] It is to communicate with the parent, as part of my responsibility, the problem that exists and ask for their help. We inform them and then find out what directions we can take that will eliminate the need for further problems.

On July 10, 1973, the Department of Pupil Personnel of the Columbus Public Schools forwarded to all principals a memorandum containing guidelines for the suspension of students. The memorandum contained the following guidelines:

A. Grounds for suspension.

1. Violation of any City of Columbus Ordinance or state or federal law; and
2. Violation of written school rules of Board of Education regulations; and
3. Activities which interfere with or threaten the orderly functioning of school activities including classrooms, extra-curricular and athletic activities; and
4. Any activity which is grounds for expulsion. This shall include, but not be limited to, assault on a teacher, arson, or destruction of school property, active leadership in school disruption and direct refusal to follow a direct order from an administrator in time of school tension.

B. Suspension procedures.

1. Whenever an incident occurs which may lead to a suspension, the principal or assistant principal shall investigate the nature of the alleged offense before commencing suspension procedures. Unless the pupil is unavailable or unwilling to discuss the incident with the principal, this investigation shall include a discussion with the pupil so that the pupil may be given an opportunity to be heard with respect to the alleged offense.
2. If the principal determines that grounds for suspension do exist, he shall notify the pupil of the exact reason and length of the suspension and further inform the pupil that the suspension means he must stay off school property and away from school-sponsored activities during the entire term of the suspension.
3. Notify the parent or guardian of the suspension, by phone if possible, and explain the reason and length of the suspension. Except in cases of disruption where circumstances make it vital that one or several pupils be removed from the school property immediately because of a threat to the safety of other pupils, faculty or school property, no pupil shall be released from school during the school day without notifying the parent or guardian in person or by phone.
4. The parent or guardian shall be provided an opportunity to attend a conference with the principal, to review the reasons for the suspension.
5. Within 24 hours after the incident leading to suspension, a letter shall be written to the parents or guardian which shall include the reasons for and term of the suspension and that

a conference with the principal will be arranged, at mutual convenience, at the earliest possible time. A carbon copy of this letter, together with relevant information regarding the suspension, shall be sent to Pupil Personnel (designated agent of Clerk of Board of Education).

6. In the event that any suspension is subsequently found to be erroneous, all references to the suspension shall be expunged from the school records.
7. At the conclusion of a suspension, it is the responsibility of the principal to see that the pupil is informed that the suspension is terminated and he is eligible to return to school.

DWIGHT LOPEZ

In February, 1971, Dwight Lopez was 19 years of age and a student at Central High School, Columbus, Ohio. He was the only witness to give testimony regarding his suspension from Central High School. Defendants did not present any evidence regarding Dwight Lopez's suspension from Central High School, other than the letters sent by the Administration at Central High School to Dwight Lopez's parents regarding the suspension.

Dwight Lopez testified that in late February, 1971, there was tension at Central High School over Black History Week. On the morning of February 26, 1971, he had a free study period in the lunch room. While he was in the lunch room, black students came in and started overturning tables. Dwight Lopez testified that he and several of his friends walked out of the lunch room. He testified that he took no part in the unlawful activity, and that he did not violate any school rule or any other rule.

On the morning of February 26, 1971, school was suspended at Central High School. Dwight Lopez returned to his home. There he received a phone call from Mr. Calvin Parks, principal of Central High School, notifying him that he had been suspended. He was not advised of the reasons for the suspension.

Dwight Lopez's parents received the following letter dated February 26, 1971:

Dear Mr. and Mrs. Lopez:

We have had a continued [sic] problem in school for several days and today a group of students disrupted our complete school program.

Dwight was in the group and we need to have a personal conference with you and Dwight to determine what the problem may be. Please keep him at home until a conference can be arranged. This will take some time. We will be communicating with you.

Respectfully,
CALVIN PARKS, *Principal*

On March 1, 1971, Mr. and Mrs. Lopez received the following letter:

Dear Mr. and Mrs. Lopez:

It will be necessary for you to appear at the Board of Education before Dwight returns to school. I have given your telephone number to Mr. Williams of the Pupil Personnel Office of the Board of Education. He will be in touch with you to set up an appointment.

Dwight is to remain home during the hours school is in session.

Yours truly,
JAMES C. FURGASON

On March 5, 1971, Mr. and Mrs. Lopez were advised that a meeting had been set for March 8, 1971. Dwight Lopez testified that on March 8, 1971, he, his mother and a sister went to the Board of Education building but could not get in because the entrance was blocked by several hundred persons who were present at a rally protesting Board of Education policies. No further meeting was scheduled.

Dwight Lopez testified that his sister wrote a letter to Columbus Public School officials protesting his suspension.[2] He further testified that following March 8, 1971, his mother and his sister called the Office of Pupil Personnel but could not get past the secretary. On March 24, 1971, Dwight Lopez was transferred from Central High School to the Adult Day School. He did not request this transfer. Dwight Lopez testified that he did not attend the Adult Day School during the Spring of 1971. However,

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[2] Defendants offered into evidence Dwight Lopez's Columbus Public School's cumulative record folder. It contained the following letter, dated March 24, 1971 to Mrs. Eileen Lopez from Mr. H. M. Williams, Director of Pupil Personnel from Columbus Public Schools:

Dear Mrs. Lopez:

I have received a letter from your daughter, Mrs. Alana Robinson, pertaining to your son, Dwight. She was inquiring as to the status of Dwight and his returning to school in Columbus.

As you no doubt recall, I had scheduled an appointment with you and Dwight on March 8, 1971 at 8:30 a.m. The purpose of this conference was to discuss various possibilities relating to Dwight's future educational plans.

This appointment was not kept nor did I receive from you a request to set up another conference. Since Dwight is 19 years of age and is no longer of compulsory school age, I thought that possibly you had made other plans for Dwight.

In regards to Dwight's placement in a Columbus school, permission is granted for him to enroll in Adult Day School, 272 S. Nelson Road, immediately. Waiver of fees is being recommended.

Sincerely,
H. M. Williams, Director
Pupil Personnel

he returned to the Columbus Adult Night School and received his diploma on June 10, 1972.

BETTY CROME

In March, 1971, Betty Crome was 13 years of age and a student at McGuffey Junior High School. She was the only witness to give testimony regarding her suspension from McGuffey Junior High School. The defendants presented no testimony regarding her suspension, other than a letter from the principal of McGuffey Junior High School to Miss Crome's parents. Betty testified that on March 3, 1971, she went to her first period class. When class was dismissed, there were disturbances in the hall. Students were breaking light bulbs and throwing glasses in the school cafeteria. She could not get to her second period class, therefore she went out into the playground with other students. The principal came out into the playground and told the students assembled there to go home.

Betty further testified that she went with other students to Linden McKinley High School which was on her way home, and it was her purpose to return to her home. However, she stopped with the other McGuffey Junior High School students at Linden McKinley High School. There she was arrested by Columbus Police officers and taken to the Juvenile Bureau of the Columbus Police Department. Police called her mother who came to get her. Prior to releasing her they discussed Betty's situation with her mother. No charges were brought by the police department.

On or about March 3, 1971, Betty's mother received the following letter:

Dear Mrs. Adams:

This is official notification that your son/daughter, Betty J. Crome, has been temporarily suspended from McGuffey Junior High. This suspension will

continue until March 8, 1971 at 10:45 at which time you are to accompany him/her to school for a conference. During this time he/she is to remain at home during school period.

Yours respectfully,
FRANK D. MASON, *Principal*

Betty further testified that neither she nor her parents were ever advised of the reasons for her suspension. Her mother never talked with the principal regarding the suspension. She was returned to McGuffey Junior High School on or about March 8, 1971. She was not given an opportunity to make up work that she missed during the period of her suspension. She is currently a student in the Columbus Public School system.

DEBORAH FOX

In March, 1971, Deborah Fox was 16 years of age and a tenth grade student at Marion-Franklin Senior High School. She testified that on March 10, 1971, there were disturbances at Marion-Franklin High School. During the noon hour, Mr. Kollmer, an assistant principal, came up to her in the cafeteria and told her that he wanted her to come to his office. Mr. Kollmer said that if she didn't go to his office, she could go home for 10 days. Miss Fox went to Mr. Kollmer's office after talking with her mother on the telephone. Mr. Kollmer then told her that she was suspended for 10 days. She testified that she did not do anything which violated any rule or regulation of the school.

Miss Fox further testified that she was not given an opportunity to explain her side of the story. There was no hearing in which the facts underlying her suspension was determined.

On March 19, 1971, she went with her father to Mr. Kollmer's office and she was advised that she was again

suspended for a period of 10 days. She stated no reason was given for the suspension.

Miss Fox further testified that following this second 10 day suspension, she was transferred from Marion-Franklin to South High School and completed the school year there. Her family then moved into the district of East High School and she was permitted to attend school there. Subsequently, she graduated from Central Night School in June, 1972.

Betty further testified that she was not given an opportunity to make up any of the work that she missed during her suspension. She believed that her grades went down following her suspension and transfer.

Phillip Fulton, principal of Marion-Franklin High School, gave testimony by deposition which is in conflict with the testimony given by Deborah Fox. This principal testified that on Wednesday, March 10, 1971, at approximately 9:00 a.m., students were assigned either to a "club activity" or to a study hall. Four girls, including Deborah Fox, left their club "and had gone into the halls and created a disturbance". They refused to obey a teacher's order to return to their club activity. Two assistant principals were unable to get the four girls to abide by school rules. Mr. Fulton then arrived, and told the girls to report to their assigned class. Mr. Fulton did not suspend any of the students. They apparently complied with his order to return to class.

Mr. Fulton testified that during the conforntation in the hallway Miss Fox was "very loud and disrespectful." She shouted at Mr. Kollmer, an assistant principal, "I hate you." During the noon hour Mr. Kollmer confronted Miss Fox in the school cafeteria. She was "still making negative comments." Mr. Fulton testified that she again told Mr. Kollmer "I hate you." Mr. Kollmer told her to report to the administration office. Miss Fox refused.

Mr. Kollmer then contacted her mother and requested that she come to the school to pick her up. Mr. Kollmer talked with plaintiff's mother prior to imposing the suspension. Mr. Fulton acquired his information regarding Miss Fox's conduct in part as a result of reports made to him by Mr. Kollmer. He also personally observed and heard Miss Fox's disruptive activity in the administration offices. Mr. Fulton testified that she was making rude and derogatory remarks to both of his assistant principals, Mr. Kollmer and Mr. Gill.

On March 10, 1971, Mr. Kollmer wrote the following letter to Miss Fox's parents:

> Dear Parents:
>
> I have suspended Deborah from Marion-Franklin High School until Friday, March 19.
>
> Deborah was extremely defiant and disrespectful with the assistant principal today.
>
> During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.
>
> Sincerely,
> RICHARD KOLLMER,
> *Assistant Principal*

Mr. Fulton testified that on March 19, 1971, Miss Fox "returned to school with her parents again and repeated the same kind of behavior that she had repeated earlier, again being disrespectful of Mr. Kollmer . . . and disrespectful in the office." On March 19, 1971, Mr. Kollmer sent the following letter to Miss Fox's parents:

> Dear Parents:
>
> I have suspended Deborah Fox from Marion-Franklin High School until Monday, March 29, or until contacted by Mr. Robert Carter or his representative regarding your daughter's school placement.
>
> During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.
>
> Sincerely,
> RICHARD KOLLMER,
> *Assistant Principal*

Mr. Fulton testified that he and his staff exhausted all avenues open to them with regard to Miss Fox's school behavior. He testified that she was a bright student but did not apply herself because she had a peer group position of leadership which identified her in the role of militant. Mr. Fulton believed that the transfer and consequent change of environment would result in better academic achievement for Miss Fox. Miss Fox's cumulative record folder contains the following entry under a category denominated "Additional Test Results — Comments": "3-15-71 Suspended for student disruption".

SUSAN COOPER

Susan Cooper testified that in March, 1971 she was an eleventh grade student of Marion-Franklin High School. On Monday, March 15, 1971, there was racial tension at Marion-Franklin High School. She wanted to go home, but was unwilling to leave without an excuse. She went to the school attendance office in an attempt to be excused. She talked with Mr. Richard Kollmer, assistant principal, who told her that she had to go to class. She told Mr. Kollmer that her mother had told her to go home if there were continuing tensions in the school. Mr. Kollmer told her "Well, you are suspended anyway."

Susan further testified that she met her mother on

her way home. She and her mother returned to the school. They waited to talk with Mr. Kollmer but he was unavailable. Mr. Gill, another assistant principal, told them to go home for 10 days, and that when she came back they could have a conference. She was not given an opportunity to tell her side of the story.

Mr. Gill sent Mrs. Cooper the following letter dated March 16, 1971:

> Dear Mrs. Cooper:
>
> I have suspended Susan, your daughter, from Marion-Franklin High School until Thursday, March 25. I will reserve 11:00 a.m. on this day for a conference with you and your daughter.
>
> Susan was involved in the disturbance at school on Monday, March 15, at which time she showed a lack of respect for the principal.
>
> During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.
>
> Sincerely,
>
> Oscar R. Gill,
>
> *Assistant Principal*

Susan further testified that following the 10 day suspension, she returned to Marion-Franklin High School with her mother, at which time they had a conference with the principal or an assistant principal. The facts leading up to the suspension were not discussed in any detail.

Susan Cooper was not permitted to make up any work she missed during the 10 day suspension. During the 1971-1972 school year Susan was elected homecoming queen of Marion-Franklin High School. She graduated in June, 1972.

Mr. Fulton, the principal at Marion-Franklin High

School, testified that on March 15, 1971, he ordered Miss Cooper to go to class, but that she refused. Mr. Fulton further testified that she was insolent and encouraged other students not to obey his order to go to class.

OTHER STUDENTS

The named plaintiffs, Tyrone Washington, Clarence Byars, Rudolph Sutton, Bruce Harris and Carl Smith did not testify at the hearing before the single-Judge District Court. No evidence was offered in their behalf.

Mr. Fulton, the principal of Marion-Franklin High School gave deposition testimony regarding the suspensions of Tyrone Washington, Clarence Byars, Rudolph Sutton, and Bruce Harris.

Mr. Fulton testified that on Monday, March 15, 1971, at approximately 9:00 a.m., there were disturbances in the eight to ten homerooms which were held in the school auditorium. When the disrupting students were notified that if they did not return to their homerooms, they would be suspended, they voluntarily went to their homerooms.

When the class bell rang for the first morning period, a group of black students entered the auditorium and refused to leave. The auditorium was scheduled to be used as a classroom during the first period. The group of students three times refused to obey an order to leave. One of the students, Tyrone Washington, told Principal Fulton that they (the students) were tired of listening to him and that now it was his turn to listen to them. Tyrone Washington further told Principal Fulton that they (the students) were going to tell him what was to be done. The principal suspended Tyrone Washington for disrupting the educational program. Washington wes removed from the auditorium by two plain-clothed policemen.

Oscar Gill, an assistant principal at Marion-Franklin

High School, sent a letter dated March 16, 1971 to the parents of Tyrone Washington:

Dear Parents:

I have suspended Tyrone, your son, from Marion-Franklin High School until Thursday, March 25. The Pupil Personnel Department of the Columbus Board of Education will notify you concerning a disposition of this case.

Tyrone was involved in a disturbance at school on Monday, March 15. He defiantly refused to follow the directions of the principal. Furthermore, he created an explosive situation.

During his suspension, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,
OSCAR R. GILL,
Assistant Principal

School records indicate that Tyrone Washington was graduated from Marion-Franklin High School on June 6, 1971. The school records contain the following information under the heading "Additional Test Results — Comments": "3-15-71 Suspended for school disruption".

Mr. Fulton further testified that while Tyrone Washington was being removed from the auditorium Rudolph Sutton attacked a police officer. Sutton was then suspended from school. On March 16, 1971, Mr. Gill, an assistant principal, had a conference with Rudolph Sutton, his parents and his sister. Another conference was held on March 25, 1971 with Rudolph Sutton and his family.

On March 23, 1971, Rudolph Sutton was transferred from Marion-Franklin High School to South High School. He was graduated from South High School on June 6,

1971. Under the heading "Additional Test Results — Comments" the following entry appears on his school records: "3-18-71 Suspended for school disruption".

Mr. Fulton testified that Clarence Byars was in the halls of Marion-Franklin High School on March 15, 1971 and refused an order to go to class. Further, Mr. Fulton testified that Clarence Byars encouraged other students to refuse to go to class. Mr. Fulton then called Clarence Byars' mother and conferred with her on the telephone. Clarence Byars was suspended from school on March 15, 1971.

Richard Kollmer, assistant principal at Marion-Franklin High School, wrote the following letter to Clarence Byars' parents dated March 15, 1971:

Dear Parents:

I have suspended Clarence from Marion-Franklin High School until Thursday, March 18. I will reserve 9:00 a.m. on this day for a conference with you and your son.

Clarence refused to go to class as directed, was disrespectful with the principal, and was inciting a school disruption.

During the suspension period, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,
RICHARD KOLLMER,
Assistant Prinicpal

Columbus Public School records indicate that Clarence Byars was graduated from Marion-Franklin High School on June 11, 1972. Clarence Byars' school file also contains a copy of the March 15, 1971 letter from Assistant

Principal Richard Kollmer, notifying his parents of his suspension from high school.

Mr. Fulton testified that on March 23, 1971, during the course of an assembly in the Marion-Franklin High School auditorium Bruce Harris and several other black students stood up, turned their backs to the assembly speaker, and gave the "Black Pledge". Bruce Harris was suspended for disrupting the assembly program.

Mr. Fulton testified that he attempted to contact Bruce Harris' brother, who acted as his guardian, but was unable to do so. Bruce Harris did not return to school on March 30, 1971 when his suspension was terminated. The following letter was sent by Assistant Principal Oscar R. Gill dated March 23, 1971 to Bruce Harris' brother:

> Dear Mr. and Mrs. Robinson:
>
> I have suspended Bruce, your brother, from Marion-Franklin High School until Tuesday, March 30.
>
> During the suspension the Pupil Personnel Department of the Columbus Board of Education will review with you the contents of the letter of November 6, 1970.
>
> Bruce disrupted the assembly and walked out of the assembly during this morning. This he did after the principal made clear that if a student did, he would be suspended.
>
> During the suspension period, your brother is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at home.
>
> Sincerely,
> OSCAR R. GILL,
> *Assistant Principal*

Records of the Columbus Public School system indicate that Bruce Harris graduated from the evening high school on June 14, 1972. There is no indication in his official school records that he was suspended from Marion-Franklin High School.

There was no testimony regarding Carl Smith's suspension from the Columbus Public Schools. Carl Smith's Columbus Public Schoool's file indicates that he was graduated from Columbus Evening High School on June 14, 1972. There is no indication in the school records submitted to the Court that plaintiff was suspended from high school in March of 1971. There is an indication that he was withdrawn from Central High School on March 31, 1971 because he was over-age.

In addition to the above facts found by the single-Judge United States District Court and adopted by the Three-Judge United States District Court, the parties entered into a stipulation of fact filed with the Court on October 10, 1972. A copy of the stipulation of fact is attached as an appendix to the Court's finding of facts.[3]

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[3] On May 25, 1973, counsel for defendants filed a motion to withdraw the stipulation on the ground that the defendants were then informed that a hearing was going to be held on the factual issues and that plaintiffs should be put to the burden of proving the allegations contained in their complaint. The Court notes that the facts contained in the stipulation were all proven by the testimony and exhibits offered at the hearing before the single-Judge District Court. Basically, the stipulation itself was skeletal in nature. The facts conceded by defendants were those contained in letters from school administrators to suspended students and their parents and notations in students' official Columbus Public School records. There is no indication in the memorandum in support of the motion to strike the stipulation that any matters contained in the stipulation were untrue. Thus, the facts in the stipulation would be subject to a request for admissions under Rule 36(a), Fed. R. Civ. P. Additionally, the Court notes that defendants in their answer admitted almost every fact contained in the stipulation. All of paragraphs 5, 7, 8, 9, 10 and 13 of the stipulation are admitted. Paragraph 1 is admitted, except for the seventh sentence thereof. Paragraph 2 was admitted, except for Betty J. Crome's age. Paragraph 3 was admitted, except

Norval Goss, present Director of Pupil Personnel of the Columbus Public Schools, compiled a chart of the named plaintiffs' cumulative academic record. He drew the conclusion that plaintiffs' suspensions had no effect on their academic achievement as reflected in their grade point averages.[4]

Mr. Goss testified that students receive zeros for work missed during a suspension. They are not accorded the opportunity to make up the work. Mr. Goss conceded that any absence from school may have negative educational effects.

Plaintiffs presented evidence that suspension from school results in psychological harm to the student. The effects of suspension are not uniform. Most suspended students respond in one or more of the following ways:

1. The suspension is a blow to the students' self-esteem.
2. The student feels powerless and helpless.
3. The student views school authorities and teachers with resentment, suspicion and fear.
4. The student learns withdrawals as a mode of problem solving.
5. The student has little perception of the reasons for the suspension. He does not know what offending acts he committed.
6. The student is stigmatized by his teachers and school administrators as a deviant. They expect the student to be a troublemaker in the future.

A student's suspension may also result in his family and neighbors branding him a troublemaker. Ultimately repeated suspension may result in academic failure.

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for the third and fifth sentences. Paragraphs 4, 6, 11, 12, 14 and 15 of the stipulation are not admitted by the answer. Upon consideration, and being fully advised, the Court HOLDS that the motion is without merit, and therefore it is DENIED.

Defendant's Exhibit B is attached to the findings of fact and made a part of this Opinion and Order as if fully written herein.

APPENDIX

		1967-68	1968-69	1969-70	1970-71	1971-72	1972-73	
Byars, Clarence	Credits Earned		5.9	5.7	5.1	4.0		2.559
	Point Average		2.70	2.67	2.63	2.00		
Cooper, Susan	Credits Earned		4.7	5.7	5.1	2.5		1.933
	Point Average		1.98	1.91	1.80	2.20		
Crome, Betty	Credit Earned				(2.8)	(2.2)	4.2	1.00
	Point Average				.79	.71		
Fox, Deborah	Credits Earned		4.7	5.7	5.1	5.0	1.5	2.087
	Point Average		2.04	1.91	1.17	1.89		
Harris, Bruce	Credits Earned	4.2	3.2	2.6	2.5	4.0	3.66	1.074
	Point Average	1.33	.76	.63	1.17	2.11		
Lopez, Dwight	Credits Earned	4.2	.2	5.6	3.0	4.0		1.037
	Point Average	1.33	.04	.85	1.66			
Smith, Carl	Credits Earned	4.7	1.0	4.2	2.7	4.4		1.258
	Point Average	1.19	.19	1.09	1.90	1.77		
Sutton, Rudolph	Credits Earned	4.2	5.9	4.6	4.0			1.818
	Point Average	1.57	1.68	2.28	1.75			
Washington, Tyrone	Credits Earned	4.8	3.7	4.2	5.5			1.861
	Point Average	2.00	1.40	2.00	2.09			

CONCLUSIONS OF LAW

The Three-Judge Court adopts in full the factual findings of the single-Judge District Court. The factual issues having been resolved, the case is now before the Three-Judge Court for decision of the legal questions presented. Before reaching the constitutional questions presented, several procedural and jurisdictional issues must be considered.

CLASS ACTION

Plaintiffs seek to maintain this action "on behalf of all other students residing in the City of Columbus who are similarly situated and affected by the policy and usage complained of" in the complaint.

The prerequisites of a class action are that:

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
>
> Rule 23(a), FED. R. CIV. P.

When the class is limited to all students of the Columbus Public Schools suspended on or after February, 1971, the class alleged satisfies each of these prerequisites. The Court determines that the class action is maintainable under the provisions of Rule 23(b)(2) in that the Columbus Public Schools and their employees have acted in accordance with §3313.66, Ohio Revised Code and guidelines established by the Department of Pupil Personnel in all suspensions.

JURISDICTION OVER THE SUBJECT MATTER

Title 42, United States Code, Section 1983 provides, in relevant part, that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The complaint alleges that §3313.66, Ohio Revised Code, which provides that a "principal of a public school may suspend a pupil from school for not more than ten days" with a provision for notice to the student's parents and the clerk of the Board of Education, is unconstitutional.

Defendants argue that §3313.66, Ohio Revised Code is not the source of a principal's authority to suspend a student. Rather, defendants assert in their brief that "a school board and the local school officials possess historical inherent power" to discipline students.[5] Section 3313.66, Ohio Revised Code, defendants argue, is not a source of authority, but a limitation on school authorities' inherent

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[5] Defendants cite *Rumler* v. *Board of School Trustees*, 327 F.Supp. 729, 737 (D. S. C. 1971), *affirmed* 437 F.2d 953 (4th Cir. 1971), and the cases cited therein, in support of the inherent power of school officials to discipline students. See also, *Tate* v. *Board of Education*, 453 F.2d 975, 978-979 (8th Cir. 1972); *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195, 200 (6th Cir. 1969), *cert. denied* 399 U.S. 906 (1970); *Esteban* v. *Central Missouri State College*, 415 F.2d 1077, 1088 (8th Cir. 1969), *cert. denied* 398 U.S. 965 (1970); *Banks* v. *Board of Public Instruction*, 314 F.Supp. 285, 290 (S.D. Fla. 1970), *affirmed* 450 F.2d 1103 (5th Cir. 1970), *vacated to permit timely filing of notice of appeal*, 401 U.S. 988 (1971); *Jones* v. *State Board of Education*, 279 F. Supp. 190, 202 (M.D. Tenn. 1968), *affirmed* 407 F.2d 834 (6th Cir. 1969), *cert. dismissed as improvidently granted*, 397 U.S. 31 (1970), *rehearing denied* 397 U.S. 1018 (1970). *But see*, *Soglin* v. *Kauffman*, 418 F.2d 163, 167 (7th Cir. 1969). The Court in *Rumler* rejected plaintiffs' argument that they were denied due process of law when they were suspended without the protection of due procedural safeguards. However, the Court did not suggest that it was without subject matter jurisdiction to entertain the claim for relief under 42 U.S.C. §1983. Indeed, the Court denied the claim on the merits.

power to discipline students. Defendants contend that because they were acting pursuant to their inherent authority and not under color of state law pursuant to Section 3313.66, the complaint fails to establish that the Court has jurisdiction over the subject matter.[6] Article 6, §3 of the Ohio Constitution commands that:

> Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds. . . .

The Ohio Legislature has established school districts, Chapter 3311, Ohio Revised Code, which provide free public elementary and secondary education for every Ohio resident between the ages of six and 21 years.[7] Although imprecise usage has lead to the misconception that the power to discipline is "inherent", see 48 O. Jur. 2d Schools, §176, the power to discipline students is actually mandated by Section 3313.20, Ohio Revised Code, which provides in relevant part:

> The board of education shall make such rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises. . . .

It is well-recognized in Ohio that boards of education are purely creatures of statute whose powers and duties are limited by the Legislature. *Verberg* v. *Board of Education*, 135 Ohio St. 246, 248 (1939); *Perkins* v. *Bright*, 109 Ohio St. 14, 21 (1923); *State ex rel. Clarke* v. *Cook*, 103 Ohio St. 465, 467 (1921).

When defendants acted to suspend plaintiffs they were

[6] In their motion to dismiss defendants argue on similar grounds that the complaint fails to allege facts stating a cause of action. There has been a trial of the factual issues before a single-Judge, therefore the three-Judge Court will determine the issues on the merits, not by motion to dismiss.

[7] §3321.01, Ohio Revised Code.

acting under the color of Article 6, §3 of the Ohio Constitution, legislation implementing Article 6, §3, and the rules and regulations adopted by the school board and its delegates pursuant to §§3313.20 and 3313.66, Ohio Revised Code. There is no merit to defendants' contention that they were not acting under color of state law within the meaning of 42 U.S.C. §1983.

JURISDICTION OVER THE PERSON

Defendant Board of Education argues that the Court does not have jurisdiction over it, because it is not a "person" within the meaning of 42 U.S.C. §1983.[8]

Under Ohio law a board of education is a "body politic and corporate" which is "capable of suing and being sued". Section 3313.17, Ohio Revised Code. Even though it is not immune from suit,[9] an Ohio board of education is a political subdivision of the State. *See, Brown* v. *Board of Education*, 20 Ohio St. 2d 68, 71-72 (1969).

In *Monroe* v. *Pape*, 365 U.S. 167, 187-192 (1961), the Supreme Court held that a city was not amenable to a suit for damages under the provisions of 42 U.S.C. §1983 because the legislative history of the Civil Rights Act of 1871 demonstrated a Congressional intent that political subdivisions of a State not be included within the definition of a "person" under the Act.

Subsequent to the decision many federal courts recognized a distinction between suits for damages, which were

[8] Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

[9] Whether a board of education is a sovereign arm of the State cloaked with immunity which the State has waived or an entity which is not entitled to immunity because it is not sovereign is an unresolved question in Ohio. *Cf. Board of Education* v. *Volk*, 72 Ohio St. 469 (1905) with *State* v. *Gibson*, 130 Ohio St. 318, 322 (1935).

barred by *Monroe* v. *Pape*, and suits for declaratory and injunctive relief, which were considered actionable. *See, e.g., Dailey* v. *City of Lawton*, 425 F.2d 1037 (10th Cir. 1970); *Schnell* v. *City of Chicago*, 407 F.2d 1084 (7th Cir. 1968); *Atkins* v. *City of Charlotte*, 296 F. Supp. 1968 (W.D. N.C. 1969); *Cf. Monroe* v. *Pape*, 365 U.S. *supra* at 191, n. 50.[10] Applying this rationale some courts have held that a school board is a "person" within the meaning of 42 U.S.C. §1983 when the complaint seeks equitable relief only, and not damages. *Butts* v. *Dallas Independent School District*, 436 F.2d 728, 729 (5th Cir. 1971); *Harkless* v. *Sweeny Independent School District*, 427 F.2d 319 (5th Cir. 1970), *cert. denied* 400 U.S. 991 (1971); *Williams* v. *San Francisco Unified School District*, 340 F. Supp. 438, 438-439 (N.D. Calif. 1972); *Schreiber* v. *Joint School District No. 1*, 335 F. Supp. 745, 747 (E.D. Wis. 1972); *Callaway* v. *Kirkland*, 334 F. Supp. 1034, 1036-1037 (N.D. Ga. 1971); *Henson* v. *City of St. Francis School District*, 322 F. Supp. 1034 (E.D. Wisc. 1971); *Local 858 of A. F. of T.* v. *School District No. 1*, 314 F. Supp. 1069 (D. Colo. 1970); *Abel* v. *Gousha*, 313 F. Supp. 1030 (E.D. Wisc. 1970); *Porcelli* v. *Titus*, 302 F. Supp. 726 (D. New Jersey 1969); *Adams* v. *School Board*, 53 F.R.D. 267 (M.D. Pa. 1971). *See, Lee* v. *Board of Regents*, 441 F.2d 1257 (7th Cir. 1971). A number of other courts have held that a school board is not a "person" under the provisions of 42 U.S.C. §1983 regardless

[10] Since the decision in *Monroe* v. *Pape* the United States Supreme Court has decided many cases in which equitable relief was sought under 42 U.S.C. §1983 against a state, city, or school board, without discussion of whether they are "persons" under the Act. *See, e.g., Baker* v. *Carr*, 369 U.S. 186 (1962); *Reynolds* v. *Sims*, 377 U.S. 713 (1964); *Raney* v. *Board of Education*, 391 U.S. 443 (1968); *Tinker* v. *Des Moines*, 393 U.S. 503 (1969); *Boddie* v. *Connecticut*, 401 U.S. 371 (1971); *Broadrick* v. *Oklahoma*, ___ U.S. ___ (1973); *San Antonio Independent School District* v. *Rodriguez*, ___ U.S. ___ (1973).

of the nature of the relief sought. *Kerr* v. *Clarenceville School District*, 344 F. Supp. 1244, 1246 (E. D. Mich. 1972); *Webb* v. *Lake Mills Community School District*, 344 F. Supp. 791, 807 (N.D. Iowa 1972); *Hayes* v. *Cape Henlopen School District*, 341 F. Supp. 823 (D. Del. 1972); *Gruelich* v. *Mounds View Independent Public School District*, 334 F. Supp. 1276, 1279 (D. Minn. 1972); *Conway* v. *Alfred I. DuPont School District*, 333 F. Supp. 1217, 1218 (D. Del. 1971); *Blount* v. *Ladue School District*, 321 F. Supp. 1245, 1250 (E.D. Mo. 1970); *Morey* v. *Independent School District*, 312 F. Supp. 1257 (D. Minn. 1969), *affirmed* 429 F.2d 428 (8th Cir. 1970); *Patton* v. *Bennett*, 304 F. Supp. 297, 299 (E.D. Tenn. 1969). Although the Sixth Circuit has not ruled on the exact question, it has taken the general position that political subdivisions of a state are not "persons" within the meaning of 42 U.S.C. §1983 regardless of the nature of the relief sought. *See, Deane Hill Country Club, Inc.* v. *City of Knoxville*, 379 F.2d 321, 323-324 (6th Cir. 1967).

Two recent United States Supreme Court decisions leave little doubt as to the proper resolution of the issue presented. In *Moore* v. *County of Alameda*, —— U.S. ——, 41 U.S.L.W. 4627 (1973), the Supreme Court held that a county was not a "person" within the meaning of 42 U.S.C. §1983 because it was not Congress' intention "to impose liability on political subdivisions of the States." In *City of Kenosha* v. *Bruno*, —— U.S. ——, 41 U.S.L.W. 4819 (1973), the Supreme Court held that Congress did not intend a distinction between actions for money damages and those for injunctive and declaratory relief in defining the word "person" in 42 U.S.C. §1983. Thus, if a governmental entity is a political subdivision of a State, it is not a "person" within the meaning of 42 U.S.C. § 1983 regardless of whether the suit is for legal or equitable relief.

The Columbus Board of Education is a political subdivision of the State of Ohio, and is, therefore, not a "person" within the meaning of 42 U.S.C. §1983. The Court HOLDS that the motion to dismiss the defendant, Columbus Board of Education, is meritorious, and therefore GRANTED.

Defendants further argue that if the Court does not have jurisdiction over the Columbus Board of Education, it cannot rule on the constitutionality of Section 3313.66, Ohio Revised Code and the regulation adopted pursuant to that section.

The United States Supreme Court in *Ex parte Young*, 209 U.S. 123, 159-160 (1908) stated the theory of liability under §1983:

> If the act which the state Attorney General seeks to enforce be a violation of the Federal Constitution, the officer in proceeding under such enactment comes into conflict with the superior authority of the Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the Supreme authority of the United States.

The named defendants acted under authority of State law as employees of the Columbus Board of Education. If the State law or their actions under color of that law deprived plaintiffs of their constitutional rights, the deprivation is actionable under §1983.

Defendants argue that only the Columbus Board of Education has the authority to abandon the present disciplinary procedures, and therefore the Court has no jurisdictions to declare the constitutionality of the statute and regulations and to enjoin their enforcement.

The Columbus School Board has no authority to license

its employees to violate the United States Constitution. If an employee of the Columbus Board of Education acts, under the authority of state law and regulations adopted pursuant thereto, in such a manner as to deprive someone of his constitutional rights, this Court has the power to declare the statute and regulations a nullity and to enjoin the employee from acting under the unconstitutional statute to deprive anyone of his constitutional rights. *Ex parte Young, supra.*

MOOTNESS

Defendants argue that the suspension guidelines adopted by the Department of Pupil Personnel on July 10, 1973 moot the constitutional question presented.

The new guidelines have no impact upon the constitutional claims of the named plaintiffs or of any member of the class they represent who was suspended prior to July 10, 1973.[11] If their suspensions were imposed without due process of law, they have a right to a declaration that the suspension procedure was unconstitutional and to the expunction of any reference to the suspension from all records maintained by the Columbus Public Schools. There is a present, live controversy, and not a moot action. *See, Golden* v. *Zwickler*, 394 U.S. 103, 110 (1969).

EXHAUSTION OF STATE COURT REMEDIES — ABSTENTION

Defendants contend that plaintiffs should have contested their suspensions and the constitutionality of §3313.66, Ohio Revised Code in the State courts of Ohio.[12]

There is no requirement under 42 U.S.C. § 1983 that

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[11] Plaintiffs have not engaged in conduct which would subject them to the newly adopted suspension procedures. Thus, they cannot sue on their own behalf or on the behalf of others for relief from the newly adopted suspension procedures. *See, Hall* v. *Beals*, 396 U.S. 45, 48-49 (1963).

[12] Defendants suggest the suspensions were reviewable under the provisions of §2506.01, Ohio Revised Code.

State court[13] remedies be exhausted prior to seeking federal relief. *Preiser* v. *Rodriguez*, — U.S. — (1973) (slip opinion pp. 1-2); *Houghton* v. *Shafer*, 392 U.S. 639 (1968); *King* v. *Smith*, 392 U.S. 309, 312 n. 4 (1968); *Damico* v. *California*, 389 U.S. 416 (1967); *McNeese* v. *Board of Education*, 373 U.S. 668, 671 (1963); *Monroe* v. *Pape*, 365 U.S. 167, 183 (1961).

Defendants also argue that the Court should abstain from determining the constitutionality of §3313.66, Ohio Revised Code, to permit the Ohio court to have the first opportunity to construe its terms. *See, Gibson* v. *Berryhill*, — U.S. — (1973); *Younger* v. *Harris*, 401 U.S. 37 (1971); *Samuels* v. *Mackell*, 401 U.S. 66 (1971); *Boyle* v. *Landry*, 401 U.S. 77 (197); *Perez* v. *Ledesma*, 401 U.S. 82 (1971); *Dyson* v. *Stein*, 401 U.S. 200 (1971); *Byrne* v. *Karalexis*, 401 U.S. 216 (1971).

The Civil Rights Act of 1871 was intended by Congress to provide a federal remedy for the deprivation of constitutional rights which was supplementary to state remedies. *Monroe* v. *Pape*, 365 U.S. *supra* at 183. The federal remedy is not dependent upon a State remedy.

In the present case plaintiffs have no remaining administrative remedies. Their remedy, if any, is State court review of the administrative action resulting in their suspensions. Under such circumstances a federal court should not abstain from considering the constitutionality of a state statute. *See, Gibson* v. *Berryhill*, — U.S. — (1973) (slip opinion p. 13).

PROCEDURAL DUE PROCESS

The Fourteenth Amendment to the Constitution of the United States provides that no State shall:

> deprive any person of life, liberty, or property, without due process of law. . . .

[13] More accurately, the doctrine of exhaustion applies to administrative, not judicial, remedies. *Gibson* v. *Berryhill*, — U.S. — (1973) (slip opinion p. 10, n. 13).

The right to procedural due process applies to a broad spectrum of important private and governmentally created interests. *See, e.g., Vlandis* v. *Kline*, — U.S. —, 41 U.S.L.W. 4796 (1973) (Education. Proof of residence for entitlement to in-state fee rates); *Morrissey* v. *Brewer*, 408 U.S. 471 (1973) (Parole. Revocation of parole without hearing); *Stanley* v. *Illinois*, 405 U.S. 645 (1972) (Child custody. Father denied custody without fitness hearing); *Bell* v. *Burson*, 402 U.S. 535 (1971) (Driver's license. Uninsured motorist's driver's license suspended without hearing unless security posted following accident); *Wisconsin* v. *Constantineau*, 400 U.S. 433 (1971) (Reputation. Public posting of notice person not to be sold liquor); *Goldberg* v. *Kelly*, 397 U.S. 254 (1970) (Welfare benefits. Welfare benefits terminated without prior notice and hearing); *Smiadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969) (Wages. Wages garnisheed without notice or opportunity to defend); *Slochower* v. *Board of Education*, 350 U.S. 551 (1956) (Public employment. Teacher discharged without notice and hearing.)

When presented with an allegation that due process has been denied, the Court must first determine whether the interest left unprotected falls within the ambit of a liberty or property within the meaning of the Fourteenth Amendment. This is an inquiry into the *nature* of the interest at stake, not its *weight*. If it is a protected interest, the Court then looks at the weight of the interest and the extent of its deprivation to determine what process is due. *Board of Regents* v. *Roth*, 408 U.S. 564, 570-671 (1972); *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972).

The concept of liberty includes

> not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and

bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

Those interests included within the concept of liberty are not limitless, but the United States Supreme Court has recognized that

> In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed. *Board of Regents* v. *Roth*, 408 U.S. *supra* at 572 [citations omitted]

The Supreme Court has not resolved the question of whether a student's statutory right[14] to an education is a liberty which is protected by due process of law. The Supreme Court has frequently referred to the importance of education in the American system of government. In *Brown* v. *Board of Education* the Court noted that:

> education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. 347 U.S. 483, 493 (1954).

See, *San Antonio Independent School District* v. *Rodriguez*, — U.S. —, 41 U.S.L.W. 4407, 4416 (1973); *Wisconsin* v. *Yoder*, 406 U.S. 205, 213 (1972); *Abington School District* v. *Schempp*, 374 U.S. 203, 230 (1963) (Brennan J., concurring); *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); *Meyer* v. *Nebraska*, 262 U.S. 390 (1923); *Williams* v. *Dade County School Board*, 441 F.2d 299, 302 (5th Cir. 1971); *Sullivan* v. *Houston Independent School District*, 333 F.Supp. 1149, 1172 (S.D. Tex. 1971); *Ordway* v. *Hargraves*, 323 F.Supp. 1155, 1158 (D. Mass. 1971); *Hosier* v. *Evans*, 302 F.Supp. 316, 319 (D. St. Croix 1970).

Recently in *San Antonio School District* v. *Rodriguez*, — U.S. —, 41 U.S.L.W. 4407 (1973) the Supreme Court was presented with the question of whether differential State aid to local school districts violates the equal protection clause of the Fourteenth Amendment. The Court, in determining whether the rational basis test, *United States* v. *Moreno*, — U.S. —, 41 U.S.L.W. 5105 (1973); *Gomez* v. *Perez*, — U.S. —, 41 U.S.L.W. 4174 (1973); *United States* v. *Kras*, — U.S. —, 41 U.S.L.W. 4117 (1973); *Jefferson* v. *Hackney*, 406 U.S. 535, 546 (1971); *Weber* v. *Aetna Casualty & Surety Co.*, 406 U.S. 164, 172-173 (1972); *Richardson* v. *Belcher*, 404 U.S. 78, 81 (1971); *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970); *McGowan* v. *Maryland*, 366 U.S. 420, 426 (1961); *Morey* v. *Doud*, 354 U.S. 457, 465-466 (1957); *Williamson* v. *Lee Optical Co.*, 348 U.S. 483 (1955); *Gulf, Colorado & Santa Fe Ry.* v. *Ellis*, 165, 150 (1896); *Yick Wo.* v. *Hopkins*, 118 U.S. 356, 373-374 (1886), or the compelling state interest test, *Dunn* v. *Blumstein*, 405 U.S. 330, 341-343 (1972); *Shapiro* v. *Thompson*, 394 U.S. 618, 634, 638 (1969); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966); *Brown* v. *Board*

[14] In Ohio primary and secondary education is given free to all school district residents between the ages of six and 21 years. Section 3321.01, Ohio Revised Code. School attendance is compulsory between the ages of six and 18 years. Section 3313.64, Ohio Revised Code.

of Education, 347 U.S. 483 (1954), should be applied to the legislative scheme, stated that the right to an education was not explicitly or implicitly guaranteed by the Constitution. Consequently, the Court applied the rational basis test, not the compelling state interest test. *San Antonio School District* v. *Rodriguez*, — U.C. *supra* at —, 41 U.S.L.W. *supra* at 4416.

The Supreme Court's holding that the right to an education is not explicitly or implicitly guaranteed by the Constitution does not affect the determination of whether it is a liberty or property which cannot be interfered with by the State without the protection of due procedural safeguards. As noted above, interests included within the concepts of liberty and property are often created by the State which have no Constitutional status.[15]

The question presented is whether the State created right to an education is a protected liberty under the Fourteenth Amendment's due process clause.[16]

Since the decision in *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961) the lower federal courts have without exception recognized that a student has the due process right to notice and hearing prior to expulsion or suspension from school for a substantial period of time. *Woods* v. *Wright*, 334 F.2d 369 (5th Cir. 1964); *Esteban* v. *Central Missouri State College*, 415 F.2d *supra* at 1089; *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195, 200 (6th Cir. 1969), *cert. denied*, 399 U.S. 906 (1970); *Williams* v. *Dade County School Board*, 441 F.2d 299, 301-302 (5th Cir.

[15] See, pp. 30-31, *supra*.

[16] The right to an education is not an interest traditionally considered to be within the concept of "property", even though an education undoubtedly has an economic as well as an intangible value. However, governmental entitlements in our modern society often take on the incidents of property. *See generally*, Reich, *The New Property*, 73 YALE L.J. 733 (1964).

1971); *Esteban* v. *Central Missouri State College*, 277 F. Supp. 649, 651-652 (W.D. Mo. 1967); *Jones* v. *State Board of Education of Tennessee*, 279 F.Supp. 190, 198 (M.D. Tenn. 1968), *affirmed*, 407 F.2d 834 (6th Cir. 1969) *cert. dismissed as improvidently granted*, 397 U.S. 31 (1970), *rehearing denied*, 397 U.S. 1018 (1970); *Stricklin* v. *Regents of the University of Wisconsin*, 297 F.Supp. 416 (W.D. Wisc. 1969); *Sullivan* v. *Houston Independent School District*, 307 F.Supp. 1328, 1337 (S.D. Tex. 1969); *Hobson* v. *Bailey*, 309 F.Supp. *supra* at 1401-1402; *Sullivan* v. *Houston Independent School District*, 333 F.Supp. 1149 (S.D. Tex. 1971); *DeJesus* v. *Penderthy*, 344 F.Supp. 70, 74-75 (D. Conn. 1972). Although suspension from school for a short period of time as opposed to a lengthy suspension or expulsion is a lesser interference with the right to education, the due process clause of the Fourteenth Amendment still cloaks the student. *Tate* v. *Board of Education of Jonesboro, Arkansas*, 453 F.2d *supra* at 979; *Farrell* v. *Joel*, 437 F.2d 160, 162 (2d Cir. 1971); *Esteban* v. *Central Missouri State College*, 415 F.2d *supra* at 1089; *Madera* v. *Board of Education of the City of New York*, 386 F.2d 778, 784-785 (2d Cir. 1967). No Court faced with the question has held that the right to an education is not within the concept of "liberty".

It is important to remember that even though the interference with the liberty of a right to education is limited, the student's right treated with procedural fairness prior to a deprivation of the right to an education is not lost. The magnitude of the deprivation affects the formality and comprehensiveness of the due process safeguards; it does not affect the basic fact that these safeguards shield the student from arbitrary or capricious interference with his right to education. In *Board of Regents* v. *Roth*, 408 U.S. 564, 470-571 fn. 7 and 8 Justice

Blackmun discussed the applicability of procedural due process to protected Fourteenth Amendment liberties:

> Before a person is deprived of a protected interest, he must be afforded opportunity for some kind of a hearing 'except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event'. *Boddie* v. *Connecticut*, 401 U.S. 371, 379. While '[m]any controversies have raged about . . . the due process clause' . . . it is fundamental that except in emergency situations (and this is not one) due process requires that when a state seeks to terminate [a protected] interest . . . , it must afford 'notice and opportunity for hearing appropriate to the nature of the case' *before* the termination becomes effective *Bell* v. *Burson*, 402 U.S. 535, 542. For the rare and extraordinary situations in which we have held that deprivation of a protected interest need not be preceded by opportunity for some kind of a hearing, *See e.g., Central Union Trust Company* v. *Garvan*, 254 U.S. 554, 566; *Phillips* v. *Commissioner*, 283 U.S. 589, 597; *Ewing* v. *Mytinger and Casselberry, Inc.*, 339 U.S. 594.
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> . . .
>
> Formality and procedural requisites of a hearing vary with the relative importance of interests involved and the nature of the subsequent proceedings. *Boddie* at 378. But the constitutional requirement of opportunity for *some* form of hearing before deprivation of a protected interest, of course, does not depend upon such a narrow balancing process.

If education is a protected liberty when expulsion is involved, then it remains a liberty when suspension occurs. The right to an education is the interest being afforded procedural protection. It either is, or is not a liberty

under the Fourteenth Amendment. The difference between expulsion and suspension becomes important only when the Court confronts the question of what process is due to protect the Fourteenth Amendment liberty.

Considering the importance of education in our society today, the Court HOLDS that the State created entitlement to an education is a liberty protected by the due process clause of the Fourteenth Amendment.

The Court now turns to the more difficult question of what process is due a student before the State may deprive him of his right to an education by imposing a suspension not to exceed 10 days.

The primacy of the educator in the school has been unquestioned by the Courts. The Courts have consistently reaffirmed the right of school administrators to manage their school systems without interference from the Courts, so long as the basic commands of the Constitution are honored.

The Courts have repeatedly emphasized the need for affirming the comprehensive authority of the states and of school officials consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. *Tinker* v. *DesMoines School District*, 393 U.S. 503, 507 (1969). *See also, Epperson* v. *Arkansas*, 393 U.S. 97, 104 (1968); *Bright* v. *Nunn*, 448 F.2d 245 (6th Cir. 1971); *Robinson* v. *Board of Regents*, No. 72-1867 (6th Cir. March 28, 1973); *Tate* v. *Board of Education of Jonesboro, Blackwell* v. *Issaquena City Board of Education*, 363 F.2d 749, 753 (5th Cir. 1966); *Jackson* v. *Dorrier*, 424 F.2d 213, 218-219 (6th Cir. 1970), *cert. denied*, 400 U.S. 950 (1970); *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195 (6th Cir. 1969); *Banks* v. *Board of Public Instruction of Dade County*, 314 F.Supp. 285, 289 (S.D. Fla. 1970), *affirmed*, 450 F.2d 1103 (5th Cir.

1971), *vacated to permit timely filing of appeal,* 401 U.S. 988 (1971).

The Courts have vigorously asserted the right, and indeed the duty of school administrators to prohibit student behavior which materially disrupts classwork, endangers property or interferes with the rights of other students. *Tinker* v. *Des Moines School District,* 393 U.S. *supra* at 513; *Soglin* v. *Kauffman,* 418 F.2d 163, 167 (7th Cir. 1969); *Esteban* v. *Central Missouri State College,* 415 F.2d 1077, 1087 (8th Cir. 1969); *Gardenhire* v. *Chalmers,* 326 F.Supp. 1200, 1202 (D. Kan. 1971); *Hobson* v. *Bailey,* 309 F.Supp. 1393, 1400 (W.D. Tenn. 1970); *General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Learning,* 45 F.R.D. 133, 141 (W.D. Mo. *en banc* 1968). Remembering that school officials are better suited to make decisions affecting their institutions, the Court nonetheless is Constitutionally bound to insure that the student be afforded the minimum procedural process mandated by the Constitution.

The nature of the due process protection of the right of education is dependent on the severity of the sanction. *Tate* v. *Board of Education of Jonesboro, Arkansas,* 453 F.2d *supra* at 979; *Farrell* v. *Joel,* 437 F.2d *supra* at 162; *Jackson* v. *Hepinstall,* 328 F.Supp. 1104, 1106 (N.D. N.Y. 1971); *Rumler* v. *Board of School Trustees for Lexington County,* 327 F.Supp. 729, 744 (D. S.C. 1971), *affirmed* 437 F.2d 953 (4th Cir. 1971); *Gardenhire* v. *Chalmers,* 326 F. Supp., *supra* at 1203. When the sanction is a short suspension as opposed to a lengthy suspension or expulsion, more informal procedures may be adopted by school authorities who make the disciplinary determination. *Tate* v. *Board of Education, of Jonesboro, Arkansas,* 453 F.2d *supra* at 979; *Farrell* v. *Joel,* 437 F.2d *supra* at 163; *DeJesus* v. *Penberthy,* 344 F.Supp. *supra* at 74; *Jackson* v. *Henpinstall,* 328 F.Supp. *supra* at 1106; *Rumler* v. *Board of School Trustees for Lexington County,* 327 F.Supp. *supra* at 744; *Schwartz* v. *Schuker,* 298 F.Supp. 239 (E.D. N.Y. 1969).

All courts which have considered the problem have recognized the authority of school administrations to suspend students for a short period without a hearing if an emergency situation requires the removal of the disruptive student from the school to restore an academic atmosphere. *Williams* v. *Dade County School Board,* 441 F.2d *supra* at 301; *Sullivan* v. *Houston Independent School District,* 333 F.Supp. *supra* at 1172; *Gardenhire* v. *Chalmers,* 326 F.Supp. *supra* at 1205; *Banks* v. *Board of Public Instruction of Dade County,* 314 F.Supp. *supra* at 291-292; *Hobson* v. *Bailey,* 309 F.Supp. *supra* at 1400; *Buck* v. *Carter,* 308 F.Supp. 1246, 1249-1250 (W.D. Wisc. 1970); *Stricklin* v. *Regents of the University of Wisconsin,* 297 F.Supp. *supra* at 420.

Due process is not a straitjacket imposed by the Courts upon educators. The minimum requirements of notice and a hearing prior to suspension, except in emergency situations, does not require inflexible procedures. Courts must be mindful not to require educators to follow specific or particular procedural frameworks. Due process is satisfied if the procedures are "reasonably calculated to be fair to the student and lead to a reliable determination of the factual issues involved." *Gardenhire* v. *Chalmers,* 326 F. Supp. *supra* at 1202-1203. As the District Court stated in *DeJesus* v. *Penberthy,* 344 F.Supp. *supra* at 74:

> School authorities must be given discretion within wise limits to find facts and assess their significance. Their knowledge of the context within which discipline problems arise entitles their judgment to be accorded great weight. On the other hand, there is less reason to accord such authorities as much discretion in fashioning procedures. However flexible the

contours of due process may be in the ascertainment of the outer limits is a judicial function under the Fourteenth Amendment. Of course, school authorities must have some discretion in developing fair procedures. Hopefully, they will not assume that the minimum requirements of the due process clause as determined by the courts are all that they, as school administrators, should determine to accord students as a matter of sound educational policy.

The Fourteenth Amendment due process requirement of notice in a hearing are "nothing more than fair play." *Banks* v. *Board of Public Instruction of Dade County*, 314 F.Supp. *supra* at 291. If school administrators follow procedures which result in a fair factual determination made after notice and an opportunity to defend against the charges of misconduct, then no matter how informal the procedure, the student has been accorded the minimum requirements of the due process clause of the Fourteenth Amendment of the Constitution of the United States.

The decisions which have dealt with the subject in the composite provide that a minimum procedural fairness requires:

1. Immediate removal of a student whose conduct disrupts the academic atmosphere of the school, endangers fellow students, teachers or school officials, or damages property.
2. Immediate written notice to the student and parents of the reason(s) for the removal from school and the proposed suspension should be given within 24 hours.
3. Not later than 72 hours after the actual removal of the student from school, the student and his parents must be given an opportunity to be present at a hearing before a school administrator who

will determine if a suspension should be imposed. Such hearing, which is not a judicial proceeding, must provide at a minimum

(a) Statements in support of the charge(s) against the student upon which the hearing is conducted.

(b) Statements by the student and others in defense of the charge(s) and/or in mitigations or explanation of his conduct.

(c) The administrator is not required to permit the presence of counsel or follow any prescribed judicial rules in conducting the hearing.

(d) The administrator should, within 24 hours advise the student and his parents by letter of his decision and the reasons therefor.

School administrators are free to adopt regulations providing for fair suspension procedures which are consonant with the educational goals of their schools and reflective of the characteristics of their school and locality. There is no one way to insure fairness in the suspension process. The choice of the best procedure for a particular school system should be left to the school officials charged with the administration of that school system.

In the present case plaintiffs were not accorded a hearing. The conference required by school regulations following suspension was not a fact-finding hearing, but rehabilitative in nature. None of the named plaintiffs were in fact afforded even this conference. There is no evidence in the record that any of the plaintiffs voluntarily relinquished their right to a hearing.

The Court HOLDS that plaintiffs were not accorded due process of law in that they were suspended without

hearing prior to suspension or within a reasonable time thereafter.[17]

The Court ORDERS that references to the suspensions of plaintiffs or members of their class be removed from all records of the Columbus Public Schools.

VAGUENESS AND OVERBREADTH

Plaintiffs contend that the disciplinary regulations under which they were suspended are void because they are unconstitutionally vague and overbroad. *See, e.g., Baggett* v. *Bullit*, 377 U.S. 360, 367-378 (1964); *Champlinsky* v. *New Hampshire*, 315 U.S. 568, 573 (1942); *Lanzetta* v. *New Jersey*, 306 U.S. 451, 453 (1939); *Grayned* v. *City of Rockford*, 408 U.S. 104, 114-115 (1972); *Zwickler* v. *Koota*, 389 U.S. 241, 249-250 (1967).

The concepts of vaguenes sand overbreadth are safeguards against governmental intrusion upon First Amendment rights. *See, Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 168 (1973). Plaintiffs have failed to prove that their conduct at the time of their suspensions was entitled to First Amendment protection. On the contrary, the evidence establishes that the various school administrators acted to restore order and discipline in their schools. In such circumstances, the action of school administrations does not contravene the First Amendment. *See, Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d *supra* at 200; *Esteban* v. *Central Missouri State College*, 415 F.2d *supra* at 1088; *Banks* v. *Board of Public Instruction*, 314 F.Supp. *supra* at 290; *Jones* v. *State Board of Education*, 279 F.Supp. *supra* at 202.

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[17] This holding does not reflect upon the wisdom or propriety of the suspensions themselves. Philip Fulton's testimony fully supports the suspensions he imposed. However, the Court does not review the appropriateness of the suspension. The limited issue is whether the procedure employed met the minimum standards of due process. The Court holds that it did not.

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, ET AL.,
Appellants

v.

EILEEN LOPEZ, ET AL.,
Appellees

On Appeal from a Three-Judge
United States District Court
for the Southern District of Ohio,
Eastern Division

BRIEF OF APPELLANTS

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Corwin, The Constitution And What It Means Today, Princeton University Press (1973) 15
George K. Gardner, "Liberty, The State and The School," 20 Law and Contemporary Problems, (1955) 184 ..... 14, 15
Christopher Jencks, "Is the Public School Obsolete," The Public Interest (1965-66) 18 16
Christopher Jencks, "Inequality: A Reassessment of the Effect of Family and School in America," (New York: Basic Books, 1972) 16
Paul G. Kauper, "Penumbras, Peripheries, Emanations, Things Fundamental and Things Forgotten": The Griswold Case, 64 Mich. L. Rev. 235 (1965-66) 10, 11
John Stuart Mill, "Utilitarianism and Other Writings," World Publishing Company (1962) 15
James Mize, *San Antonio Independent School Dist. v. Rodriguez:* A Study of Alternatives Open To State Courts, 8 University of San Francisco, L. Rev. 90 (1973) 10
Daniel P. Moynihan, "Maximum Feasible Misunderstanding," The Free Press, New York, (1969) 16
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IN THE

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On Appeal from a Three-Judge
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BRIEF OF APPELLANTS

OPINION BELOW

The opinion filed by the Three-Judge District Court for the Southern District of Ohio, Eastern Division, has not been reported. That opinion and order is reprinted in Appellant's Jurisdictional Statement as Appendix B.

JURISDICTION

The judgment of the District Court was entered on September 17, 1973. Appellants filed their notice of appeal with the District Court on November 9, 1973. The

Jurisdictional Statement was filed December 7, 1973. Probable jurisdiction was noted on February 19, 1974. The jurisdiction of this Court to review the judgment below is invoked pursuant to 28 U.S.C. §1253.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED:

1. United States Constitution, Amendment XIV §1. ". . . , nor shall any state deprive any person of life, liberty, or property, without due process of law; . . ."

2. Section 3313.66 of the Ohio Revised Code:
"§3313.66 Suspension or expulsion.

The superintendent of schools of a city or exempted village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school for not more than ten days. Such superintendent or executive head may expel a pupil from school. Such superintendent, executive head, or principal shall within twenty-four hours after the time of expulsion or suspension, notify the parent or guardian of the child, and the clerk of the board of education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent, or guardian, or custodian of a pupil so expelled may appeal such action to the board of education at any meeting of the board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester."

QUESTIONS PRESENTED

The following questions were presented by the jurisdictional statement and will be considered in this brief:

1. Where the United States Supreme Court has concluded that the importance of education alone will not elevate education to the status of a fundamental right guaranteed either explicitly or implicitly by the Federal Constitution and where the lower court has recognized that education is not a property right, may a district court hold that education is a liberty protected by the Federal Constitution solely on the basis that it is important?
2. Is a statute, providing for a temporary limited suspension by a principal of a local school, which has not been determined to result in condemning students to suffer grievous loss, subject to the procedural protections required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution?
3. Can a State create a liberty which is recognized as being subject to protection by the Fourteenth Amendment of the United States Constitution?

STATEMENT OF THE CASE

Appellees at the time of filing their complaint were a group of students enrolled in several different schools located in Columbus, Ohio (A. 5-10) They were suspended during a period of time in which disruptions were occurring or had occurred in the schools (A. 86-102; 123, 127, 131, 135) Four of the plaintiffs at the time of suspension were beyond the compulsory attendance age (A. 45). The complaint asserted that Section 3313.66 of the Ohio Revised Code and the rules adopted by the

Board of Education violated Appellees' constitutional and statutory civil rights. Jurisdiction of the District Court was asserted under the Civil Rights Act of 1871, 42 U.S.C. §1983, 28 U.S.C. §§1343(3), 2201 and 2202 and the Due Process Clause of the Fourteenth Amendment. The action was prosecuted as a class action.

Appellants contested the request by Appellees that a three-judge court be convened claiming that a question did not exist such as necessitated convening such a court. (A. 25) At the same time Appellants also filed a motion to dismiss the complaint asserting in part that the complaint did not state facts upon which relief could be granted. (A. 15) No specific ruling was ever made of this branch of the motion.

A three-judge court was ordered convened by an order of the Chief Judge of the United States Court of Appeals for the Sixth Circuit filed October 4, 1971. (A. 34-35)

Following the convening of the three-judge court, Appellants, at the request of the court, while not abandoning the motion to dismiss previously filed, filed an answer containing several defenses. The answer denied a proper assertion of the Court's jurisdiction. (A. 37)

The cause was tried on July 16, 1973, during which time Appellants presented the testimony of the Superintendent of Schools by deposition, explaining the manner in which suspension procedures were administered within the school system. Testimony in the form of a deposition by one of the principals of the involved schools was also presented. He explained the disruptive situation that occurred at Marion-Franklin High School which led to the suspensions. During this period of time, we find such things as refusals to go to class, refusals to clear the halls, blocking the stairways, refusal to follow directions and outside agitation all occurring. (A. 86-102)

Finally, Norval Goss, Director of Pupil Personnel, demonstrated through an exhibit he had prepared that subsequent to the suspensions at bar, the involved students proceeded with their education, maintaining the same or better point hour average than they had prior to being suspended. (A. 286)

All Appellees, either graduated or moved on to the next grade (A. 125, 133-134, 143, 152-153, 154)

In addition to contesting their involvement in particular incidents which occurred in the involved high schools, Appellees presented several psychologists and a guidance counselor who testified in general terms that a suspension can harm a student. Neither the psychologists or the guidance counselor had any knowledge respecting the involved students. They did not interview any of the students and had not studied their records. They presented no evidence that the involved students representing the class had sustained harm of any type. (A. 161-162; 176-177 188) The testimony of the psychologist and guidance counselor proceeded over objection and a motion to strike.

Following the trial, Appellants on July 17, 1973, filed a formal motion to dismiss the case for failure on the part of Appellees to establish that they had been deprived of a federally protected statutory right or a right guaranteed by the Fourteenth Amendment of the United States Constitution and because of the failure on the part of Appellees to establish, by the proper degree of proof, that Section 3313.66 of the Ohio Revised Code was unconstitutional. (A. 287) No specific ruling on this motion was ever made.

On August 31, 1973, Appellees, filed an amended complaint naming substituted parties defendant. At the request of the Court, Appellants filed an answer on be-

half of the substituted parties. In addition to setting forth a series of defenses, the answer denied that the Court was properly exercising its jurisdiction. (A. 303)

The Court rendered its opinion and order on the same day that the answer was filed. The Court, with respect to all plaintiffs, found that Section 3313.66 of the Ohio Revised Code violated the Due Process Clause of the Fourteenth Amendment. Nevertheless, in its opinion, the Court stated that school administrators had acted only to restore order and discipline in their schools, and further, the court found no suspension to be unwarranted. (Jurisdictional Statement p. 65)

SUMMARY OF ARGUMENT

The instant case presents a situation in which it is important from the outset to recognize that the term "education," where questions of Constitutional guarantees and protections are presented, can be used in two distinctly different contexts. Education is used to describe the educational system and participation in a particular system or school. Apart from education in a participation context is "education" in the larger philosophical sense of the right to pursue knowledge and the right of parents to control and direct their children's destiny. In using the term in this latter sense, we are concerned with a liberty interrelated to the right of free choice. It is education in this larger sense, of the pursuit of knowledge independent of any system, which this Court has recognized as being protected by the Constitution.

Education in the sense of participation in a state educational system or a particular school is not, in and of itself, a matter of constitutional right. This is not to say that a student has no constitutional rights in his relationship to the system. Certainly, the student retains all the clearly identified constitutional rights. However, absent a violation of those identifiable constitutional rights, participation in a public educational system, standing alone, is not another constitutional right. The state creates a system of public education and as a part of the system establishes a system of internal student discipline. The system is created by the state to serve its purposes of protection and perpetuation. Discipline and order are integral parts of, and necessarily essential to, the internal management of the system.

In answering the questions posed by the Constitutional challenge to Section 3313.66 of the Ohio Revised Code, it is important to recognize and maintain the above distinction. Suspension, and even expulsion, standing alone relate only to participation in a particular school or educational system. Partipation in a particular school or educational system is not a right of liberty or property protected by the Constitution. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 36 L. Ed. 2d 16, 44 (1973).

The challenged statute (Section 3313.66 of the Ohio Revised Code) represents a proper legislative enactment in an area (the internal management of its system) resting within the province of the States. Particularly is the above analysis and the conclusions that follow true in the present case where questions relating to violations of rights of free speech and free choice, and questions relating to discrimination, race and unequal application were missing. It is only where a statute impinges upon a fundamental (substantive) right protected by the Constitution sharply implicating the substantive right, that a right to an immediate hearing arises. Participation in a particular system or form of system is not one of

those fundamental or substantive rights, *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 36 L. Ed 2d 16, 59-60, concurring opinion of Justice Stewart.

The Government function (internal management of its system) involved in this case did not touch and sharply implicate any basic right of liberty or property possessed by Appellees. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 36 L. Ed. 2d 16, 44 (1973). Questions relating to the internal management of the educational system and the form that management should take should have been directed to the legislature. *Jackson v. Hepenstall*, 328 F. Supp. 1104 (1971) and *Negron v. Wallace*, 436 F. 2d 1139, 1141 (1971). The definition of the relationships that will exist between the managers of the educational system and participants in the system are legislative functions. *San Antonio Independent School District v. Rodriguez*, 411 U.S.l 1, 36 L. Ed. 2d 16, 41-43 (1973).

Even if this Court found that student participation in a State educational system is a liberty protected by the Due Process Clause, then the liberty is violated only where the individual suffers a severe detriment or grievous loss. The record of the instant case clearly demonstrates the complete absence of a severe detriment or grevious loss suffered by any student.

The decision of the District Court should be reversed.

ARGUMENT

(a) THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION DOES NOT ESTABLISH PARTICIPATION AS A STUDENT IN A STATE SYSTEM OF PUBLIC EDUCATION TO BE A MATTER OF CONSTITUTIONAL RIGHT.

IMPORTANCE ALONE DOES NOT CREATE SUCH A RIGHT.

The creation of State systems of public education has not served to create a new Constitutional due process right by reason of the opportunity afforded students to participate in such systems. This is not to say that through becoming a student, an individual forfeits Constitutional rights in his relationship to the system. The present case presents a situation in which the clearly identified Constitutional rights possessed by Appellees were not involved. There was no action by the State against their rights of free speech; the State was not shown to have discriminated against them; no action was taken against their right of free choice; there was no showing that an improper consideration (suspect criteria) such as race was involved and no showing that the law was being unequally applied. Thus, the three-judge Federal District Court faced with a situation wherein the State was performing the internal function of managing those who wished to participate in its system, found that a statute (Section 3313.66 of the Ohio Revised Code), which restricted the powers of management possessed by school administrators, violated the Due Process Clause of the Fourteenth Amendment.

In 1972, this Court in *Board of Regents v. Roth*, 408 U.S. 564, at 569-570, 33 L. Ed. 2d 548, (1972) stated very clearly that the requirements of procedural due process do not protect every interest:

> " 'The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite.' " See Com-

ment, "Liberty," "Property" and Procedural Due Process, 5 Conn. L. Rev. 685 (1972).

The chief factor in every situation relates not to the importance of the interest involved, but to whether or not a fundamental right of liberty or property is at stake. *Roth*, 408 U.S. 564, 571 (1972). This approach does not represent a departure from this Court's prior views as to the application of the Due Process Clause. Paul G. Kauper, "Penumbras, Peripheries, Emanations, Things Fundamental and Things Forgotten": The *Griswold* Case, 64 Mich. L. Rev. 235, 257 (1965-66).

In 1973, this court in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 36 L. Ed. 2d 16, 44, (1973) in addressing itself to the issue relating to whether or not education in the sense of the form of the state system and student participation in that system is a matter of Constitutional right concluded:

> "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. • • •"[1]

In the context of the pure fact situation presented by the instant case, in which the constitutional question relating to an asserted violation of the Due Process Clause is raised, the above principle, namely, that participation in the State educational system is neither explicitly nor implicitly guaranteed by the Constitution,

[1] The above principle has been recognized in later cases. *Sturgis v. State of Washington*, 368 F. Supp. 38, 41, affirmed 94 S. Ct. 563 (1973). It has also been recognized in *Stock v. Texas Catholic Interscholastic League*, 364 F. Supp. 362, (1973) and *Kister v. Ohio Board of Regents*, 365 F. Supp. 2739 (1973). Even prior to this Court's decision in *Rodriguez*, 36 L. Ed. 2d 16, 44, (1973) it had been recognized that education was not one of the fundamental rights guaranteed by the Constitution. *Flemming v. Adams*, 377 F. 2d 975, 977 (1967) and *Johnson v. Hackett*, 284 F. Supp. 933, 939 (1968). The commentators are also showing recognition, James Mize, *San Antonio Independent School District v. Rodriguez*: A study of Alternatives Open To State Courts, 8 University of San Francisco L. Rev. 90, 100 (1973).

takes on particular significance. If this Court remains committed to the philosophy of interpretation of the Due Process Clause that rests upon selective incorporation into the Fourteenth Amendment of certain of the enumerated rights found in the Bill of Rights, in addition to other rights not found specifically enumerated but secured as being "penumbras of the Bill of Rights," then, the Federal District Court in the instant case was not confronted with a statute which impinged upon those rights. *Griswold v. Connecticut*, 381 U.S. 479, 499, 14 L. Ed. 2d 510, 524, (1965), concurring opinion of Mr. Justice Harlan and Paul G. Kauper, "Penumbras, Peripheries, Emanations, Things Fundamental and Things Forgotten: The *Griswold* Case, 64 Mich. L. Rev. 235, 257 (1965-66). The result in *Rodriguez*, 411 U.S. 1, 36 L. Ed. 2d 16, 44 (1973), takes on further significance when it is remembered that the Due Process and Equal Protection Clauses are not mutually exclusive; *Bolling v. Sharpe*, 347 U.S. 497, 499, 98 L. Ed. 884, 886 (1954). Certainly that principle must hold true where the issue to be decided is whether a liberty or property right is involved.

Roth, 408 U.S. 564 (1972) and *Rodriguez*, 411 U.S. 1 (1973) support a conclusion that this Court has not departed from that approach. That being the case, the District Court was not faced with a situation in which the students' rights of liberty or property were being violated. The difficulty arises due to the District Court's willingness to determine the reach of the Due Process Clause based upon a completely different approach, an approach rejected by this Court. The District Court quite clearly concluded that the importance of education (participation in the state educational system) is sufficient to elevate it to the status of a liberty protected by the Fourteenth Amendment. (See Jurisdictional Statement p.

60). In *Rodriguez*, 411 U.S. 1, 36 L. Ed. 2d 16, 41-42, (1973) this Court rejected the concept that the reach of the Fourteenth Amendment should be determined on the basis of the importance of a particular subject matter or area. Importance does not identify what is and what is not a constitutionally protected right. The use of such a factor would ultimately lead to a conclusion that the Due Process Clause of the Fourteenth Amendment applies to everything. Such a course this Court has declined to follow. A further rejection of the factor of 'importance' as a determining constitutional element can also be found in *Shapiro v. Thompson*, 394 U.S. 618, 661, 22 L. Ed. 2d 600, 631 (1969) and *Lindsey v. Normet*, 405 U.S. 56, 31 L. Ed. 36, 74 (1972).

The question whether or not a person's pursuit of knowledge is a Constitutionally protected freedom of choice or liberty is not to be confused with compulsory attendance in a State created educational system. Pure questions relating to the manner in which a public school system will be internally managed, as well as the power to be given the managers of the system, are questions resting with the State. *Cafeteria and Restaurant Workers Union v. McElroy*, 367 U.S. 886, 896, 6 L. Ed. 2d 1230, 1236 (1961). Whether or not there should be enforced discipline; the form that discipline should take; the person that will enforce such discipline; are questions properly directed to the State legislative body. The Fourteenth Amendment does not grant to federal courts powers to establish and set the limits of such a policy. *Dandridge v. Williams*, 397 U.S. 471, 486, 25 L. Ed. 2d 491, 502 (1970) and *Communist Party v. S.A.C. Board*, 367 U.S. 1, 72, 6 L. Ed. 2d 625, 675 (1961).

This case does not involve questions of race and invidious discrimination; it does not involve questions

surrounding the First Amendment, it does not involve an invasion of the right of free choice, including the right of parents to control their children. The Due Process Clause of the Fourteenth Amendment was not violated.

The present case is an ideal example of a situation in which those rights guaranteed by the Due Process Clause were never implicated. The instant case fits squarely within the admonition of this Court in *Epperson v. Arkansas*, 393 U.S. 97, 104, 21 L. Ed. 2d 228, 234, (1968)

> "By and large, public education in our nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values. * * *" (Compare *Ware v. Estes*, 328 F. Supp. 657, aff'd. 458 F. 2d 1360 (1972) and *Holroyd v. Eibling*, 116 Ohio App. 440, 445-46 (1962).

The District Court while recognizing that the school administrators were acting to restore order and discipline in their respective schools, struck down Section 3313.66 of the Ohio Revised Code in the interest of establishing a policy with respect to discipline in the schools; a question properly directed to the State legislature. (See Jurisdictional Statement P. 65) This it did in a situation where no prior hearing was required under the statute.

Moreover, the District Court's conclusion that participation in a public school system created by the State legislature is a liberty protected by the Due Process Clause based on the fact that education is important, does not appear to be supported by any historical analysis of the concept of education. Historically, education

(apart from participation) is not something which emanates from the State, but is a matter of individual and parental concern. This concept finds expression in *Meyer v. Nebraska*, 262 U.S. 390, 400, 67 L. Ed. 1042, 1045 (1923).

> "***. Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; ***."

The concept is further explained in *Pierce v. Society of Sisters of Holy Names*, 268 U.S. 510, 535, 69 L. Ed. 1070, 1073 (1925):

> "The fundamental theory of 'liberty' upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty to recognize and prepare him for additional duties."

The perspective from which the educational system created by the State must be viewed is one which recognizes that the interest of the State in creating the system is not solely or basically for the purpose of furthering the interests of the individual, but to protect itself:

> "The ultimate justification for state compelled school attendance is nothing other than that the whole population must have training adequate to enable it (the State) to defend its boundaries and to sustain the activities which are indispensable to its material life. Attendance at school is no more required in the sole interest of the individual than is service in the armed forces. Both are limitations on freedom of choice imposed by practical necessity." George K. Gardner, "Liberty, The State, and The School," 20 Law and Contemporary Problems, 184, 193 (1955). (material added)

In terms of the historical analysis of education as an individual pursuit, attendance or participation in the State educational system can be viewed as a limitation upon one's liberty rather than as creating a new right of liberty. The District Court's conclusion that participation on a compulsory basis in a State educational system creates a constitutional liberty is not correct. It does not even comport with either the older or newer understandings as to the meaning of the term liberty.[2]

No need exists for taking such a view of liberty as was taken by the District Court in this case. Public schools should only be viewed as a competing system in which the State seeks to achieve the ends of protecting itself and insuring its perpetuation. Public schools were not, and should not, be viewed as something created in the sole interest of the individual. George K. Gardner, "Liberty, The State, and The School," 20 Law and Contemporary Problems 184, 193 (1955). Recognition that public schools were created by the State in the interest of the individual leads directly to the conclusion that a limitation has been placed on the individual's freedom of choice.

It is particularly important, as is this analysis important, that an individual's freedom of choice remain. Education today is in an evolutionary state. The shape it will take for the future is not leaning toward a conclusion that the individual must look to the State to pro-

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[2] Shattuck, "(The True Meaning of the Term 'Liberty' in Those Clauses in the Federal and State Constitution Which Protect Life, Liberty and Property,'" 4 Harvard L. Rev. 365 (1890-91) Charles A. Reich "The New Property," 73 Yale L.J. 733, 771, 774 (1964). Liberty is and must remain more than something "deliberately constructed by society." The "liberty" set forth in the Due Process Clause flows from natural law. John Stuart Mill, "Utilitarianism and Other Writings," World Publishing Company 126, 137-138 (1962); Corwin, "The Constitution And What it Means Today," Princeton University Press, 391-395 (1973) and *Poe v. Ullman*, 367 U.S. 497, 543, 544, 6 L. Ed. 2d 989, 1019-1020 (1961) dissenting opinion of Justice Harlan.

tect his interest. Serious questions are being raised, none of which support a conclusion that an individual's interest in education is something derived from the State. Alexander M. Bickel, "The Supreme Court and the Idea of Progress," Harper and Row (1970) 103-176, Christopher Jencks, "Is the Public School Obsolete" The Public Interest 18 (1965-66); Christopher Jencks, "Inequality: A Reassessment of the Effect of Family and Schooling in America," (New York: Basic Books, 1972 and Daniel P. Moynihan, "Maximum Feasible Misunderstanding," The Free Press, New York, 167, 194-195 (1969.)

Section 3313.66 of the Ohio Revised Code is not a statute which impinges upon "liberty," broadly defined. It does not shock the conscience of mankind to say that the administration of order and discipline with a public school system is an internal matter within the province of local school administrators and parents.

Appellees in this situation did not meet the burden of demonstrating that the school board rules and the State statute served a purpose other than legitimate administrative and management concerns. *Tinker v. Des Moines Community School District,* 393 U.S. 503, 526, 21 L. Ed. 2d 731, 749. (1968)

The District Court, for practical purposes, agreed. (Jurisdictional Statement p. 65). The statute under attack (Section 3313.66 of the Ohio Revised Code) never lost its presumption of constitutionality; it did not impinge upon constitutionally protected rights. *Alabama State Federation of Labor v. McAdory,* 325 U.S. 450, 465, 89, L. Ed. 1727, 1737 (1944) and *Becker v. Levitt,* 489 F. 2d 1087, 1091 (1973).

A violation of the Due Process Clause guarantees of liberty and property did not exist in this case.

(b) A FUNDAMENTAL RIGHT PROTECTED BY THE DUE PROCESS CLAUSE IS VIOLATED ONLY WHERE A PERSON SUFFERS A SEVERE DETRIMENT OR GRIEVOUS LOSS.

Analysis of this Court's opinions in litigation where it is claimed that the Due Process Clause of the Fourteenth Amendment is violated, support the conclusion that for a violation of a fundamental right to occur, one must establish that not only is a fundamental right involved, but that one has suffered a severe detriment as a result of the governmental function under review. In *Morrissey v. Brewer,* 408 U.S. 471, 481, 33 L. Ed. 2d 484, 494 (1972) the Court said:

> "Whether any procedural protections are due depends on the extent to which an individual will be condemned to suffer grievous loss.' * * *.[3]

Goldberg v. Kelly, 397 U.S. 254, 264, 25 L. Ed. 2d 287, 297 (1970) contained the following expression:

> "Thus the crucial factor in this context—a factor not present in the case of the black-listed government contractor, the discharged government employee, the taxpayer denied a tax exemption or virtually anyone else whose governmental entitlements are ended—is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks inde-

[3] Subjecting a secondary school student to a one to ten day suspension as a part of managing and controlling the system is no more drastic in a constitutional sense than reasonable corporal punishment. Such suspension has no greater impact than does the nonretention of a teacher, *Board of Regents v. Roth,* 408 U.S. 564, 33 L. Ed. 2d 548, 559 (1972). Compare with the types of personal impacts recognized by the court in *Suarez v. Weaver,* 484 F. 2d 678, 680 (1973), "the distinction between charges which trigger procedural protection and those that do not has yet to be drawn * * *. On the other hand, past cases establish that charges which may become public and which suggest immorality, dishonesty, mental deficiency, or abnormal emotional imbalance invoke due process considerations."

pendent resources, his situation becomes immediately desperate. * * * " See also *Skinner v. Oklahoma*, 316 U.S. 535, 86 L. Ed. 1665, (1942) *Sniadach v. Family Finance Corp.*, 395, U.S. 337, 340-342, 23 L. Ed. 2d 349, 353, 354, (1969) and *Roe v. Wade*, 410 U.S. 113, 156. (1973)

The thrust of these cases is to the effect that even where a protected interest is involved, a prior hearing is not mandated where the person holding the interest is not subject to "severe detriment" or the person is not "condemned to suffer grievous loss" as a result of government action. Thus, it is only government action directed toward government entitlements or benefits which directly and sharply implicate basic elements of life, liberty or property that will require a prior hearing.

The record of this case does not demonstrate that the involved statute has a devastating impact on any person holding a clearly identified interest within the contemplation of the term "liberty" or "property" such as would necessitate the holding of a prior hearing before the principal could act. The students directly involved in this case all either graduated from school on time or ahead of time, or moved on to the next grade. The point hour ratio they each maintained either remained the same or in some cases slightly improved following the suspensions (A. 125, 133-134, 143, 152-153, 154 and Deft. Ex. B, A. 286)

The pattern of lower federal court decisions that have concerned themselves with questions surrounding the suspension of students essentially demonstrate that those courts, without addressing the question of participation in a particular State system or school, have not been able to find a liberty or property right so sharply implicated as to require a hearing before the principal or school administrator acts. where the suspension is for a

period of from one to ten days. No student is subjected to a severe detriment or condemned to suffer a grievous loss. *Linwood v. Board of Education of Peoria*, 463 F. 2d 763, cert. denied, 409 U.S. 1027 (1927) seven days suspension; *Tate v. Board of Education of Jonesboro, Ark.*, 453 F. 2d 975 (1972) five days suspension; *Dunn v. Tyler Independent School Dist.*, 460 F. 2d 137 (1972) ten day suspension; *Hatter v. Los Angeles City High School District*, 310 F. Supp. 1309 (1970) eight day suspension; *Farrell v. Joel*, 437 F. 2d 160 (1971) ten day suspension;[4] *Banks v. Board of Public Instruction of Dade County*, 314 F. Supp. 285 (1970) ten day suspension.

However, the threshold question with respect to whether or not a recognized right of liberty or property protected by the Constitution is implicated, is not answered through the application of a balancing process to the interests involved. *Roth*, 408 U.S. 564, 571, 33 L. Ed. 2d 548, 557 (1972).[5]

Section 3313.66 of the Ohio Revised Code served a legitimate State function, and as such served as a limitation on the broad inherent power possessed by Appellant's administrators and as a limitation on the stat-

[4] Farrell, 437 F. 2d 160, 162 (1971) probes the question relating to whether or not the federal court should ever have intervened. That question is a worthy one. *Tinker v. Des Moines Community School Dist.*, 393 U.S. 503, 514-515, 21 L. Ed. 2d 731, 742, (1968) concurring opinion of Justice Stewart. *Black Coalition v. Portland School Dist.*, NO. 1, 484 F. 2d 1040, (1973) discusses the issue in terms of short versus long term suspension. In that same vein is *Murray v. West Baton Rouge Parish School Bd.*, 472 F. 2d 438 (1973), both concluding that short term suspensions do not violate the Due Process Clause and do not require a prior hearing.

[5] Compare *Cook v. Carlson*, 364 F. Supp. 24 (1973) where the search was for the function involved, as well as the property interest, with a case like *Givens v. Poe*, 346 F. Supp. 202 (1972) where even though short term suspensions were recognized not to violate the Constitution, the balancing test comes into full play. The internal governmental function involved receives no real consideration. It is only where fundamental rights are sharply implicated that an immediate hearing is required. Even though the instant situation did not involve a fundamental right, relief through several avenues was available. See Section 2506.01 of the Ohio Revised Code.

utory power they possessed by virtue of Section 3313.20 of the Ohio Revised Code.

Leaving aside the pure question of where education, as viewed in a dual context fits or doesn't fit within the framework of the Constitution, it cannot be concluded that a basic right of life, liberty or property is either initially or otherwise drawn in question through the governmental function involved, as regulated by Section 3313.66 of the Ohio Revised Code. Even though welfare standing alone did not fit into the category of recognized fundamental rights protected by the Constitution, the right to life was found to be otherwise sharply implicated when the benefits provided by welfare were terminated. *Dandridge v. Williams*, 397 U.S. 471, 25 L. Ed. 2d 491 (1970) and *Goldberg v. Kelly*, 397 U.S. 254, 25 L. Ed. 2d 287 (1970). A similar comparison analysis applied to the record of the instant case, even though participation in a particular system or school is not guaranteed by the Constitution, does not demonstrate that any other recognized basic right of liberty or property was involved. No student representing the class was condemned to suffer grievous loss of a recognized right. *Rodriguez*, 411 U.S. 1, 36 L. Ed. 2d 16, 44 (1973). At no time did liberty as it relates to "education" in the personal sense discussed in *Meyer v. Nebraska*, 262 U.S. 390, 67 L. Ed. 1042 (1923) and *Pierce v. Society of Sisters of Holy Name*, 268 U.S. 510, 69 L. Ed. 1070 (1925), become involved in this case, either directly or indirectly. This case only involved the school systems internal maintenance of order and discipline. *Steier v. New York Education Commissioner*, 271 F. 2d 13, 18-19 (1959). The evidence presented in this case, does not offer any reason to change such conclusion.

Interests of liberty or property were not terminated or so sharply implicated either initially or at a later time by reason of the action taken as to require a prior hear-

ing. The students' right to acquire useful information was not being terminated. Their free choice right to attend a public or private school was not involved. They had those rights before the suspensions and retained those rights during and after the suspensions. In fact, the involved students in reality proceeded on with their participation in the system graduating or advancing at essentially the same or better point hour ratio than they had previously maintained. (A. 125, 133-134, 143, 152-153, 154 and Deft. Ex. B, A. 286). The function involved was the government's management and control of the internal affairs of a system it had established. The vitality of that function as a legitimate local concern has previously been recognized by this Court. *Epperson v. Arkansas*, 393 U.S. 97, 104, 21 L. Ed. 2d 228, 234 (1968). *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 507, 21 L. Ed. 2d 731, 738 (1968). *Healy v. James*, 408 U.S. 169, 192 (1972). That concept has also received recognition from the Circuit Courts. *Medera v. Board of Education*, 386 F. 2d 778 (1967); *Blackwell v. Issaquena County Board of Education*, 363 F. 2d 749, 753 (1966) and *Tate v. Board of Education*, 453 F. 2d 975, 978 (1972). The District Court clearly recognized that Appellants were performing that function. (Jurisdictional Statement p. 65). That function is best described by this Court in *Cafeteria Workers v. McElroy*, 367 U.S. 886, 896, 6 L. Ed. 2d 1230, 1236. (1961).

> "Moreover the governmental function operating here was not the power to regulate or license, as lawmaker, an entire trade or profession, or to control an entire branch of private business, but, rather, as proprietor, to manage the internal operation of an important federal military establishment."

The instant situation is analogous. Here the State, as proprietor of the system it had established, was acting to preserve order and discipline internally among partici-

pants within that system. Its actions were not directed against the type of entitlement recognized in *Goldberg v. Kelly*, 397 U.S. 254, 25 L. Ed. 2d 287, (1970) *Bell v. Burson*, 402 U.S. 535, 29 L. Ed. 2d 90 (1971) and *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 23 L. Ed. 2d 349 (1969).

The strong statements of this Court and lower federal courts recognizing the comprehensive authority of school administrators, particularly where no other specific area of the Constitution is involved, either directly or indirectly, is nothing more than a traditional recognition that in the area of discipline and control, this Court is faced with an area of action resting exclusively with the States. That recognition is best summarized by Justice Harlan in his dissenting opinion in *Tinker v. Des Moines Community School District*, 393 U.S. 503, 526 L. Ed. 2d 731, 749, (1968):

> "* * * At the same time I am reluctant to believe that there is any disagreement between the majority and myself on the proposition that school officials should be accorded the widest authority in maintaining discipline and good order in their institutions. To translate that proposition into a workable constitutional rule, I would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns — * * *." (See also *Rumler v. Board of Sch. Tr. for Lexington Co. Dist. No. 1*, 327 F. Supp. 729, 743-744, aff'd 437 F. 2d 953 (1971), and the analysis contained therein).

The difficulty in the instant case relates not to the fact that the statute was motivated by improper concerns, but to the fact that the District Court was attempting to perform a function which rests with the State legislative body. The District Court went through

two hearings, and concluded that "the evidence establishes that the various school administrators acted to restore order and discipline in their schools, and found:

> "This holding does not reflect upon the wisdom or propriety of the suspensions themselves. Phillip Fulton's testimony fully supports the suspensions he imposed. ***" (Jurisdictional Statement p. 65),

Such findings are direct evidence that what was involved in this case was not a problem surrounding the Due Process Clause, but whether or not a change should be made in the disciplinary power and practices of the school administrators. That problem should have been directed to the legislature. The burden of demonstrating that the statute was motivated by other than legitimate concerns was not met.

No person involved in this case had a basic right of liberty or property sharply drawn in question; no person was condemned to suffer grievous loss of a basic right of liberty or property.

CONCLUSION

It is respectfully submitted that for the foregoing reasons the judgment of the District Court should be reversed.

Respectfully submitted,
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Section 3321.01 ..... 4, 9, 15, 17
Administrative Guide, Columbus Public Schools,
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Books, Treatises & Law Reviews

Code of Student Rights and Responsibilities, National Education Assn., Washington, D.C., 1971 43
40 Education Daily 5 (Feb. 27, 1974) 43
Flowers, C.E., "Effects of An Arbitrary Accelerated Group Placement on The Tested Academic Achievement of Educationally Disadvantaged Students," unpublished Doctoral Dissertation, Teachers College, Columbia Univ. (1966) 34
Joint Statement on Rights & Freedoms of Students, 53 American Assn. of University Professors Bull. 365 43
Marting, "AMA Book of Employment Forms," American Management Assn., (1967) 35
Masling, J. "Differential Indoctrination of Examiners & Rorschach Responses," 29 Journal of Consulting Psychology 198 (1965) 34

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Melton, R. K. "The Self-Fulfilling Prophesy" 8 Antioch Review 193 (1948) 34

"Race & Suspensions In New Orleans," 11 Integrated Education 30 27

Reich, "Individual Rights & Social Welfare: The Emerging Legal Issues," 74 Yale L.J. 1245 (1964) 18

Reich, "The New Property," 73 Yale L.J. 733 (1964) 14

Remarks & Excerpts From Public Hearings on Truancy & Expulsion, Education Service Region, Cook County, Chicago, Ill. December 13 & 14, 1972 (ERIC ED 078926) 36

Report of The Select Committee on Equal Educational Opportunity, "Toward Equal Educational Opportunity," Dec. 1972 27

Rosenthal, R., "Experimenter Effects In Behavioral Research," New York (1966) 34

Rosenthal, R., & Lenore Jacobson, "Teachers Expectancies: Determinants of Pupils' I.Q. Gains," 19 Psychological Reports 115 (1966) 34

"The Student Pushout, Victim of Continued Resistance to Desegregation," Southern Regional Council & The Robert F. Kennedy Foundation 27, 36

Wright, "The Constitution On Campus," 22 Vand. L.J. 1027 (1969) 28

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-898

NORVAL GOSS, et al.,
APPELLANTS,

v.

EILEEN LOPEZ, etc., et al.,
APPELLEES.

ON APPEAL FROM A THREE JUDGE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

APPELLEES' BRIEF ON THE MERITS

Opinion Below

The opinion filed by the District Court has not, as yet, been reported. A copy of the Order and Opinion is reprinted in Appellees' Motion To Affirm as Appendix A.

Statutes Involved

A. Section 3313.66 of the Ohio Revised Code:

> The superintendent of schools of a city or exempt village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school for not more than ten days. Such superintendent or executive head may expel a pupil from school. Such superintendent, executive head, or principal shall within twenty-four hours after the time of expulsion or suspension notify the parent or guardian of the child, and the clerk of the board of education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent or guardian or custodian of a pupil so expelled may appeal such action to the board of education at any meeting of the board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the board may act upon the expulsion only at a public meeting. The board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended beyond the current semester.

B. Section 1010.04 Administrative Guide, Columbus Public Schools:

> 1010.04 — Pupils may be suspended or expelled from school in accordance with the provisions of Section 3313.66 of the Revised Code.

C. The Fourteenth Amendment to the United States Constitution, Section 1, which states, in relevant part:

> —Nor shall any state deprive any person of life, liberty or property without due process of law—

Question Presented

Was the Court below incorrect when it held that the exclusion of Ohio students from school for up to ten (10) days without *any* form of fact-finding hearing was a violation of the Due Process guarantees of the Fourteenth Amendment to the United States Constitution?

Statement of the Case

In the Spring of 1971, during a period of heightened racial consciousness, several schools in the Columbus, Ohio School System were affected by racial confrontation, demonstrations and problems of various sorts. Some school officials responded by issuing blanket suspensions to all identifiable students at a given time or place.[1] Many of these students were innocent victims of these sweeping suspensions,[2] having merely been guilty of being in the wrong place at the wrong time.[3] Since the Ohio Law and the Columbus Regulations failed to provide for any procedural safeguards for these students, they had no

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[1] Although the Appellees (hereinafter students) never were certain of the exact number of children suspended, one indication is given by the testimony of Dwight Lopez, referred to in the Court's Opinion. (Motion To Affirm, p. 20). Lopez testified that he personally knew more than seventy-five students suspended from one school. (Central High School) on one given day. (Appendix, p. 120).

[2] See, e.g., the testimony of the students who testified at the trial. (Appendix, pp. 119-54).

[3] Typical of this syndrome is the testimony of Dwight Lopez and Betty Jane Crome. (Appendix, pp. 119-37).

forum to protest their innocence.[4] The result was resort to the courts in the form of this present action.

The students filed suit alleging that their suspensions violated the Procedural Due Process requirements of the Fourteenth Amendment to the United States Constitution. More specifically it was alleged that 42 U.S.C. 1983 was violated. Nine named Plaintiffs sued on behalf of a class of Columbus school students who had been suspended in a like manner. Section 3313.66 was challenged directly because it was manifest that in the absence of the statute, no authority existed to exclude children from school,[5] that the statute specifically permited suspensions without any hearing and expulsions without any prior hearings, and that in fact, the statute was relied upon by the Columbus school officials.[6] The students sought a declaration of the section's unconstitutionality, an injunction against its enforcement, and expungement of any reference to the suspensions contained in school files.

The Court, after trial, declared Section 3313.66 and Columbus Regulations in effect at the time of the suspensions unconstitutional on the grounds that they failed to provide for a hearing prior to suspension. The Court further ordered expungement as requested. It is this decision which is presently being appealed.

Although this is a class action challenging an institutional practice embodied in a law and a regulation, it is

[4] Some students did have subsequent conferences (usually ten (10) days or more after the termination of schooling) which were held not to elicit the truth but to determine future goals and placement. (Appendix, p. 114).

[5] See, e.g., § 3313.64 of the Ohio Revised Code which mandates a free education for each child between the ages of 6 and 21, and § 3321.01 which prescribes compulsory education.

[6] See, e.g., § 1010.04 of the Administrative Guide to the Columbus Public Schools set out in the "Statutes Involved" Section of this Brief.

thought useful to outline briefly the facts surrounding the suspensions of the named Plaintiffs who testified.[7] These facts are offered in order to provide the Court with a better picture of how the law operates. A summary of the facts surrounding the suspensions of four of the named Plaintiffs demonstrates the arbitrariness which the statutes and regulations sanction.

Dwight Lopez testified that on February 26, 1971 he was sitting in the school lunch room at Central High School when some other students entered and started overturning tables.[8] Apparently he was mistaken for a participant, for that afternoon he received a phone call from the school principal informing him that he was suspended and should not return to classes. A letter was also sent that day informing Dwight's parents that Dwight was suspended, that they should keep him home, and that a "conference" would be arranged (at an unspecified time) to determine "what the problems may be." Another letter was mailed

[7] Four of the original nine representative Plaintiffs testified. It was not felt necessary to present the testimony of all since this case involves an unquestioned practice of suspending students for up to ten (10) days without any hearing; once that was established the major issue of Constitutional propriety was raised; it should also be noted that some of the Plaintiffs had disappeared during the two and one half years between the filing of the Complaint and the trial. Finally, a statement contained in Appellants' Brief should be clarified. On page 3 of Appellants' Brief on The Merits it is asserted that four of the nine were above the age of compulsory attendance. It is true that four were above the age of eighteen, the age set for mandatory attendance. (ORS 3321.01). However, all were below the age of twenty-one. Under Ohio Law (ORS 3313.64) children under the age of twenty-one are entitled to a free public education.

[8] Dwight's testimony from which this summary is extracted is found in the Appendix at pp. 119-31. The letters referred to are Plaintiffs' Exhibits 1A through 1D and appear in the Appendix at pp. 120-25 and 190-93. The exhibits of the Plaintiffs and Defendants contained at pages 191-286 were admitted into evidence by oral stipulation at the beginning of the trial. The Transcript, however, does not record this stipulation. Thus the point at which some exhibits were formally introduced into evidence is not recorded.

on March 1, similar to the first, which directed that Dwight should remain at home and that a conference would, at some unspecified time, be arranged. On March 5 a letter was mailed to the parents informing them that a conference was set for March 8. On March 8 there were demonstrations outside the building scheduled for the "conference" which prevented its being held. Dwight testified that despite attempts by his sister to set another conference, none was ever held. By letter dated March 24, the District informed Dwight that he was to be transferred to "Adult Day School," although he had not requested this.

Dwight was out of school almost one month before receiving permission to return. Dwight testified that he lost credit, was treated as a trouble maker at his new school and was unable to make up his courses as a result of the suspension and transfer.[9] None of his testimony, including his assertion of innocence of any wrongdoing, was ever refuted. No hearing at any time was ever offered or held.

Betty Jane Crome was attending McGuffey Junior High School on March 3, 1971.[10] During the morning of that day, the principal decided to close the school due to disturbances. Betty had nothing to do with the disturbances. On her way home Betty had to pass Linden McKinley Senior High School. Demonstrations were taking place, and Betty stopped to watch. While there, the police swept in and picked up all students who were in the vicinity. Betty was among them. After taking her to the Police Station, the police called Betty's home and told her guardian to pick her up. No charges were ever filed. At the suggestion of the police, the guardian telephoned the

[9] Appendix, pp. 122-26.

[10] The testimony of Betty Jane from which this statement derives is found at pp. 131-37 of the Appendix. The letter referred to is Plaintiffs' Exhibit 2A and is located at pp. 131 and 202 of the Appendix.

school to find out if Betty was suspended. The guardian was told that she was, and a letter confirming that fact was received. The letter indicated that Betty was suspended until March 8 when a "conference" would be held. On March 8 Betty returned to school. This testimony was unrefuted. No hearing to determine the merits of the suspension was ever offered or held. It is worth noting that Betty's "activities" were unrelated to the school she was attending and could not even arguably have prompted an "emergency" suspension.

Deborah Fox was attending Marion-Franklin High School on March 10, 1971.[11] On that day, during the course of some demonstrations, Deborah was suspended from school for a ten (10) day period (until March 19). A letter confirming the suspension was mailed on the same day. No hearing or conference was ever offered or held. On March 19 when Deborah attempted to return to school she was informed that she was suspended for another ten (10) day period. A letter confirming this fact was mailed that same day.[12] Finally by letter of March 23, Deborah was informed that she was to be transferred to South High School. No hearing or conference either preceded or followed either the second suspension or the transfer. Deborah testified that she received zeros for work missed, and that

[11] The Statement of Facts concerning Deborah Fox is abbreviated because there is testimony by the school principal which controverts that of Deborah. Nevertheless the central fact remains: the student maintains that she engaged in no wrongdoing, but was afforded no opportunity to establish her contention. For Deborah's testimony, see pp. 147-54 of the Appendix. Refutation is provided by the school principal. See p. 102 *et seq.* of the Appendix. Letters referred to are Plaintiffs' Exhibits 3A, 3B and 3C found at pp. 151 and 211 *et seq.* of the Appendix.

[12] Deborah testified that she did nothing on March 19, but merely was told upon her return that her suspension was to continue. The principal maintained that she had been "disruptive." The letter is unusually silent about the reason for the second suspension. (Plaintiffs' Exhibit 3B, Appendix, pp. 151 and 212).

she had difficulty adjusting to her classes upon her return. (Appendix, pp. 152-53). She also had a permanent notation inserted in her file concerning the suspension. (Appendix, p. 219).

Susan Cooper was suspended from Marion-Franklin High School on March 15, 1971 for a period of ten (10) days.[13] Demonstrations had taken place and Susan was alleged to have been involved. A letter confirming the suspension was mailed to Susan's mother on March 16, setting up a "conference" for March 25, the day scheduled for Susan's return. Susan was out of school for ten (10) days. No hearings or conference designed to elicit the truth was held at any time—either before or after the suspension. Susan testified that she fell behind in her school work, receiving zeros for work missed and was given no opportunity to make up the work. (Appendix, pp. 143 and 147).

The treatment accorded these students is typical with regard to hearings.[14] No hearing or conference designed to elicit the truth of the charges supporting a suspension is given to a student. To the extent that any protestation of innocence is permitted,[15] the institutional practice is

[13] Like Deborah Fox, the testimony of Susan Cooper is controverted by the principal of Marion-Franklin and thus no useful purpose is served by a review of the facts. The same central controlling fact as found in the Deborah Fox story remains: there is a major dispute about the truth, but the student was given no opportunity to contest the suspension. Susan's testimony is to be found at pp. 137-47 of the Appendix; refuting testimony is found at p. 110 *et seq.* of the Appendix. The letter referred to is Plaintiffs' Exhibit 4A and is found at pp. 142 and 224 of the Appendix.

[14] See testimony of John Fulton at pp. 111-14 of the Appendix. See, also the testimony of Norval Goss at pp. 163-71 of the Appendix.

[15] The student is usually sent to the principal or vice-principal to be informed of his suspension. Although this is merely a step in the suspension process and not viewed as a truth ascertaining procedure, sometimes a teacher might be called in if the student convincingly attracts the attention of the principal. This process is strictly *ad hoc*. (Appendix, pp. 111-14 and pp. 167-71).

to grant an irrebuttable presumption of truthfulness to the person opposing the student.[16]

The record then seems clear. No hearing is given either prior or subsequent to a suspension. A suspension frequently develops into a longer term exclusion or transfer. It is also clear under the statute in question that no hearing precedes an expulsion. Further, the named Plaintiffs, in varying degrees, showed manifestations of the harms associated with exclusion from school. (see *infra*, p. 33 *et seq.*). Certainly, as Appellants note, all named Plaintiffs graduated. Yet, even by their own exhibit (Appendix, p. 286), six of the eight students who were in school the previous year finished the 1970-71 school year with fewer credits than the previous year, and two, Dwight Lopez and Carl Smith, lost substantial credits. It is notable that three of the nine named Plaintiffs had permanent entries in their records concerning the suspensions. (Appendix, p. 219, Deborah Fox; Appendix, p. 244, Rudolph Sutton; Appendix, p. 256, Tyrone Washington).

Summary of Argument

A. Under this Court's rulings there can be no dispute that education in Ohio is a protected interest entitled to the safeguards of the Due Process Clause of the Fourteenth Amendment. Several decisions have held education to be a protected "liberty", e.g., *Meyer* v. *Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 626 (1923); *Bolling* v. *Sharpe*, 347 U.S. 497, 74 S.Ct. 693 (1954). Given the existence of Ohio legislation establishing the right to education in that state, e.g., Ohio Revised Code, Sections 3313.48, 3313.64 and 3321.01, there can be no question that education is also a protected "property" interest within the meaning of *Board of Regents of State College* v. *Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972).

[16] See testimony of John Fulton. (Appendix, p. 113).

B. Suspension from school is state action which stigmatizes a child as a trouble maker and damages his reputation. Such a stigmatization requires Due Process protection. *Wisconsin* v. *Constantineau*, 400 U.S. 433, 91 S.Ct. 507 (1971).

C. Deprivation of a protected interest or state action causing stigmatization requires some form of appropriate prior hearing, absent an emergency situation. *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S.Ct. 1011 (1970); *Wisconsin* v. *Constantineau, supra*; *Board of Regents of State College* v. *Roth, supra*. Even if an emergency exists, Due Process requires a subsequent hearing. *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U.S. 594, 70 S.Ct. 870 (1950).

D. There is a high probability that substantial harm will result whenever a child is excluded, through suspension, from this important interest of receiving an education. The obvious loss through deprivation of education coupled with the substantial probability of collateral consequences meets that quantum of harm required to invoke the Due Process clause. *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 342, 89 S.Ct. 1820, 1823 (1969) (Harlan concurring); *Fuentes* v. *Shevin*, 407 U.S. 67, 90, 92 S.Ct. 1983, 1999 (1972); and *Board of Regents of State College* v. *Roth, supra*. Further, as the District Court correctly recognized, the severity of the deprivation merely goes to consideration of the form of the hearing and not to whether the "root requirement" of a prior hearing should or should not be met. *Roth, supra*; *Goldberg, supra*.

E. The Ohio legislation declared unconstitutional by the District Court, which provides that a student may be suspended without any hearing and may be expelled without a prior hearing, violates the above-stated precepts of law. Ohio Revised Code, Section 3313.66 and Section 1010.04 of the Administrative Guide of the Columbus Public Schools.

Argument

The students urge this Court to keep in mind several points while considering the arguments advanced herein. First, this case does not directly involve what form of hearing should be prescribed in the case of a suspension. Under this statute and the Columbus regulations, *no* hearing is given either prior or subsequent to a suspension. Thus, the primary issue is whether the Appellees (hereinafter "students") can be deprived of an education, through suspension, without any hearing. Secondly, although the facts surrounding some of the named Plaintiff students might fit within an "emergency" exception to the prior hearing rule, no subsequent hearing was ever offered or given to them. Surely in an emergency situation when nerves might be on edge, and the chance for mistaken or capricious action is heightened, the need for procedural protections becomes that much greater.

I. Education in Ohio Is a Protected Interest Within the Meaning of the Due Process Clause.

In *Board of Regents of State College* v. *Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972), this Court ruled that one must have a "liberty" interest or a "property" interest in order to invoke Due Process protection. Both reason and this Court's precedents support a holding that education in Ohio satisfies the criterion for each of these interests.

In *Meyer* v. *Nebraska*, 262 U.S. 390, 43 S.Ct. 625 (1923) this Court, in an often cited passage, defined "liberty" as follows:

> While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included

> things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, *to acquire useful knowledge*, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. 262 U.S. at 399 (emphasis added).

In *Pierce* v. *Society of Sisters of the Holy Names*, 268 U.S. 510, 45 S.Ct. 571 (1925), this Court reiterated that education is a liberty within the meaning of the Due Process Clause. In *Bolling* v. *Sharpe*, 347 U.S. 497, 499, 74 S.Ct. 693, 694 (1954), this Court again held that education was a liberty subject to Due Process protection. Moreover, this Court affirmed this important principle only a year ago in *Roth*, when it quoted approvingly the above-stated definition of liberty from *Meyer*. 408 U.S. at 572. Thus this Court has been consistent in following its acknowledgment in *Meyer* that the "liberty" of the Due Process Clause, at the very least, includes the right to education.

The District, in its Brief on The Merits, tortuously attempts to explain away this line of decisions. It argues that the "liberty" of these cases is a liberty to be free of public education; therefore, the argument goes, a deprivation of public education can not be perceived to be the deprivation of a liberty subject to Due Process protections. To carry this argument to its logical conclusion, the District is forced to argue that even an expulsion need not be protected by Due Process since it is mere exclusion from a non-liberty. (Appellants' Brief, p. 7). This argument falls of its own weight. First, this argument runs counter to every case that has decided this issue, including those

cited by the District. The legal dispute in the lower court cases has been whether a short term suspension requires stringent protections, and not, whether education is a protected interest; all courts have either ruled or assumed that it was. See e.g., *General Order on Judicial Standards of Procedure & Substance in Review of Student Discipline in Tax Supported Institutions of Higher Learning*, 45 F.R.D. 133 (W.D. Mo. *en banc* 1968).

Second, to argue that the only educational "liberty" protected by the Constitution is the right to seek an education outside the public schools is to make "liberty" a frail gossamer. Financial limitations would prohibit the great majority of citizens from enjoying this notion of educational "liberty." And, indeed, it seems likely that it was recognition of this fact in part that prompted Ohio to provide for the free education of its youth. ORS 3313.48. To limit the educational freedom protected by the Constitution solely to private searches for knowledge is to rob public education of its heretofore vital and prominent role in our society. It undermines and denegrates this Court's consistent view of public education's vital role expressed so fully in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), and reiterated recently in *San Antonio Independent School District* v. *Rodriguez*. 411 U.S. 1, 93 S.Ct. 1278 (1973). This suggestion by the defendant District is not only an inaccurate view of the law. It is a dangerous inroad on an important protected interest which has long been granted special constitutional protection by this Court.

The right to education in Ohio must be considered to be a "property," as well as a "liberty," interest, subject to Due Process Protection.[17] In *Board of Regents of State*

[17] The Appellants assert that the District Court "recognized that education is not a property right." (Appellants' Brief, p. 3). This is not an accurate portrayal of the District Court's holding. Although

College v. *Roth*, 408 U.S. 564, 577, this Court ruled that property interests may be derived from statutory entitlements. The Ohio students' right to this vital interest of education is a long and well established entitlement.

A student's right to education in Ohio and the concomitant duty of the state to provide schooling goes back to the origins of that state. The Northwest Ordinance of 1787, which first established a government in that area known today as Ohio, provided in Article Three that "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

The Constitution of Ohio of 1802 in Section Twenty-five (25) of the Bill of Rights provided that equal participation of students should be permitted in schools funded by the United States,[18] and that "all doors of the said schools, academies and universities shall be opened for the reception of schools, students and teachers of every accord...."

The Constitution of 1851, Section Seven (7) of the Bill of Rights, declared "religion, morality and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws.... To encourage schools and the means of instruction."

The present Constitution likewise provides that the General Assembly must pass laws to encourage schools and the means of instruction and must provide through taxation for a "thorough and even system of common schools throughout the state of Ohio." (Art. VI, § 2).

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the Court characterized education as a liberty, it noted that statutory entitlements such as education often take on the incidents of property, citing Reich, *The New Property*, 73 Yale L.J. 733 (1964). (see Motion To Affirm, p. 54, n. 16). The District Court further took notice of the Ohio students' statutory right to an education in discussing the liberty interest. (Motion To Affirm, p. 52, n. 14).

[18] Presumably at that early date schools were primarily funded by the United States.

Present legislation, passed pursuant to these constitutional provisions, clearly imposes a duty on local communities to provide for the education of those children residing therein. Section 3313.48 states:

> The board of education of each city, exempted village, local and joint vocational school district shall provide for the free education of the youth of school age within the district under its jurisdiction...

Section 3313.64 states, *inter alia*:

> The schools of each city, exempted village or local school District shall be free to all school residents between six and twenty-one years of age...

Not only is there a duty to provide free schooling for the children of Ohio (and, of course, a concomitant right for them to attend), but, as in most states, children are mandated by law to attend. Section 3321.01 *et seq.* of the Ohio Revised Statutes provides that all children between the ages of six and eighteen years of age must attend school and that certain penalties result from non-attendance. In fact, this requirement is considered of such magnitude that in certain instances a parent may be required to post a bond to insure that his child attends school. ORS 3321.48. The state courts have further held that under the Ohio statutory scheme there is not only the right of a child to attend school, but that if poverty interferes with the ability to exercise that right, the public must assume the burden of overcoming this barrier. *Dornette* v. *Allais*, 76 Ohio App. 345, 363-64, 63 N.E.2d, 805, 813 (1945). See also *State* v. *Gans*, 168 Ohio St. 174, 151 N.E.2d, 709 (1958).

In sum, Section 33 of the Ohio Revised Statutes broadly establishes a state-wide mandated system of education.

The clear and unequivocal purpose of this legislation is to insure that the children of the state have the opportunity to grow and develop into contributing members of society. To that end, the legislation insures their right to an education. It is precisely upon such a statutory entitlement that "property" rights for Due Process purposes have been and should be built. To allow school officials to deprive children of this statutory entitlement without some form of procedural protection is to invite mistaken, capricious or arbitrary action in clear conflict with the concept of entitlement.

In *Board of Regents of State College* v. *Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972), this Court specified how a property interest may be ascertained. This Court stated:

> Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. Thus the welfare recipients in *Goldberg* v. *Kelly, supra*, had a claim of entitlement to welfare payments that was grounded in the statute defining eligibility for them. The recipients had not yet shown that they were, in fact, within the statutory terms of eligibility. But we held that they had a right to a hearing at which they might attempt to do so. 408 U.S. at 577.

The claim of entitlement by those welfare recipients in *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S.Ct. 1011 (1970), was surely no stronger than the claim of these students to the right to attend school.

In *Bell* v. *Burson*, 402 U.S. 533, 91 S.Ct. 1586 (1971), this Court ruled that a driver's license could not be revoked without a prior hearing. As this Court stated:

> Relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a "right" or a "privilege." 402 U.S. at 559.

Again, the entitlement to a driver's license in Georgia was no greater than the entitlement of these students to education in Ohio; and surely the extensive and historical statutory scheme devised to insure the education of Ohio youth is far stronger than the "understanding" found to constitute the basis of an entitlement in *Perry* v. *Sinderman*. 408 U.S. 593, 599, 92 S.Ct. 2694, 2699 (1972).[19]

The plurality holding in *Arnett* v. *Kennedy*, 42 U.S.L.W. 4513 (1974) is based upon factors which are not present in the instant case. In *Arnett*, the plurality held that where the legislative grant of an establishment is inextricably intertwined with the procedures for denying the entitlement, one cannot take the grant without also accepting the procedures. In *Arnett*, such entitlement resulted from the fact that the entitlement and the procedures were simultaneously conferred in the same sentence. (See discussion, 42 U.S.L.W. 4518). Historically, no entitlement preceded development of the procedures. The facts in the present case are starkly different. As outlined *supra*, p. 14, the right to education in Ohio historically dates to the Northwest Ordinance of 1787, was preserved and strength-

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[19] See also, *Goldsmith* v. *United States Board of Tax Appeals*, 270 U.S. 117, 46 S.Ct. 215 (1926) (Right to Practice Law); *Sherbert* v. *Verner*, 374 U.S. 398, 83 S.Ct. 1790 (1963) (Right to Unemployment Compensation), holding entitlements to be subject to Due Process Protection.

ened by early constitutions, and is encompassed in the present Ohio Constitution. The constitutional right to an education in Ohio is made explicit by the whole legislative scheme found in Section 33 of the Ohio Revised Statutes and particularly by ORS 3313.48, 3313.64, and 3321.01. Section 3313.06 ORS, the Section under attack, stands alone, and does nothing more than prescribe disciplinary procedures. Thus the facts of the instant case are vastly different from those in *Arnett* where the entitlement and the procedures were adopted simultaneously in one sentence.

The statutory right to education in Ohio is thus much better established, both as it presently exists and in its historical antecedents than most of the other entitlements that this Court has designated property interests. In the same sense as welfare is to the welfare recipient, and a driver's license to the driver, education to the Ohio child is "essential(ly) fully deserved and in no sense a form of charity."[20] To allow mistaken, arbitrary or capricious deprivations of education without any form of procedural protection would defy logic.

The Appellants (hereinafter "District") have argued that this Court's ruling in *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278 (1973), somehow undercuts the assertion that a student's right to education is a protected interest within the meaning of the Due Process Clause. This analysis would contradict this Court's statement in *Rodriguez* that:

> Nothing this Court holds today in any way detracts from our historic dedication to public education. 411 U.S. at 30.

It further ignores the difference between "protected interests" as enunciated in the Due Process cases and

[20] Reich, Individual Rights & Social Welfare: The Emerging Legal Issues, 74 Yale L.J. 1245, 1255 (1964).

"fundamental interests," an equal protection concept. As this Court has made clear, a protected interest may spring from other than a constitutional nexus whereas a "fundamental interest," giving rise to strict equal protection scrutiny, emanates *from* the Constitution. A protected interest receives Due Process protections, when, as is the case of education in Ohio, it is a statutory entitlement, or when as here, reputation and opportunities are limited by state action. This argument of the District also runs counter to several express statements made in the *Roth* and *Rodriguez* decisions.

Previously we discussed this Court's rulings that a property interest may arise from a statutory entitlement. Indeed, in *Board of Regents of State College* v. *Roth, supra*, 408 U.S. 564, 577, this Court stated that:

> Property interests, of course, are not created by the Constitution.

The search for a "fundamental interest," for equal protection purposes is, to the contrary, a search for a constitutional nexus; as this Court stated in *Rodriguez*:

> Thus the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. *Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.* (411 U.S. 1, 33-34) (Emphasis added).

In fact, in *Rodriguez* this Court apparently anticipated and rejected the assertion now being made by the District.

In a discussion of welfare litigation, this Court noted that in *Dandridge* v. *Williams*, 397 U.S. 471, 90 S.Ct. 1153 (1970), it had rejected the contention that the right to welfare should be treated as "fundamental" for equal protection purposes, while contemporaneously ruling in *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S.Ct. 1011 (1970), that the deprivation of welfare was the deprivation of a protected property interest deserving Due Process protections. See discussion in *Rodriguez, supra*, 411 U.S. at 33 n.72. As in the case of welfare, the right to a driver's license is not "fundamental"; yet as the Court acknowledged in *Bell* v. *Burson, supra*, 402 U.S. 535, it is a statutory entitlement subject to Due Process protections. Likewise, education in Ohio is a statutory entitlement and should be accorded, at a minimum, the same protections.

It is, of course, reasonable that a "protected interest" under the Due Process Clause be different from a "fundamental interest" under the equal protection clause. The purposes and orientation of those two clauses are different. On the one hand, procedural due process is designed to protect the individual against arbitrary or mistaken governmental decision-makers; on the other hand the equal protection clause aims to insure that like-situated persons receive similar treatment.

Different as the orientation is between the two clauses, the purpose served by the "fundamental interest" designation is unique to the equal protection clause. That purpose is to provide a framework for measuring the degree of justification the state must give when it treats groups or individuals differently. If a "fundamental" or constitutionally-based interest is involved, the state has a higher burden of justification than if a non-fundamental interest is involved.

This whole framework and its reason for existence has no applicability to the measurement of, or need for, procedural safeguards under the Due Process Clause.

II. A School Suspension Is Stigmatizing and Results in a Loss of Reputation: as Such, It Requires Due Process Protection.

In *Wisconsin* v. *Constantineau*, 400 U.S. 433, 437, 91 S. Ct. 507, 510 (1971), this Court stated:

> Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him notice and an opportunity to be heard are essential.

This statement in *Constantineau* was a reiteration of principles enunciated in *Weiman* v. *Updegraff*, 344 U.S. 183, 191, 73 S. Ct. 215, 218-219 (1952), and *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 168, 71 S. Ct. 624, 646 (1951) (Frankfurter, J. concurring).

Although explicit psychological testimony is not required to establish that a suspension officially stamps a child as a "trouble maker," several prominent psychologists did testify at the trial to confirm that the stigma is this, and may be much more. Dr. Herbert Rie, the Chairman of the Section on Child Development and Psychology, Childrens' Hospital, Columbus, Ohio and Professor in the Department of Pediatrics & Psychology at Ohio State University, testified that this labeling by teachers had the potential of serious educational consequences and could also adversely affect the child's dealings with his family, neighbors and peers.[21] Indeed, this seems so basic that one would expect it to have served as the judicial basis in other Due Process exclusion cases, and it has. In what is probably the leading case in the area of school exclusion, *Dixon* v. *Alabama State Board of Edu-*

[21] Appendix, pp. 171-82. See also, the testimony of Dr. Robert Woody on this point, Appendix, pp. 154-162.

cation, 294 F.2d 150, 157 (5th Cir. 1961), *cert. denied*, 368 U.S. 930 (1961), the basis for providing Due Process protections to an excluded student was the recognition of the stigma that was likely to attach to the student. See also, *Vought* v. *Van Buren Public Schools*, 306 F. Supp. 1388, 1393 (E.D. Mich. 1969); *Cf. Breen* v. *Kahl*, 296 F. Supp. 702, 707 (W.D. Wisc. 1969), aff'd, 419 F.2d 1034 (7th Cir. 1969).

In the preparation for this brief, Counsel for the students surveyed other more concrete forms of harm that result from a suspension. Although detailed discussion of the findings will be deferred to that section dealing with harm and its application to this case,[22] we note that a substantial probability exists that a suspension of a high school student may limit both college and employment opportunities. This is further substantiated by the testimony of Floyd Horton, a former Counselor in the Columbus Public School and presently a Doctoral candidate in the School of Educational Administration at Ohio State University.[23]

In sum the designation of a student as "suspended" by definition is a negative label which has the substantial potential of causing serious harm. It is the sort of stigma that should receive some prior procedural protection under the rule of *Constantineau*.

III. Due Process Requires a Prior Hearing Whenever a Protected Interest Is Invaded or a Stigma Imposed — Absent Extraordinary Circumstances.

There is probably no principle more firmly embeded in the law than the requirement that the invasion of a protected interest be preceded by some form of Due Process

[22] *Infra*, p. 29.
[23] Appendix, pp. 182-88.

protection. Under the state legislation herein attacked neither a prior nor subsequent hearing is accorded a suspended student, and only a subsequent hearing is accorded an expelled student. Clearly this treatment runs afoul of the principle.

In *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S. Ct. 652, 656-57 (1950), this Court stated:

> Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require the deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

In *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 89 S. Ct. 1820 (1969), this Court ruled that a wage garnishment must be preceded by some form of adequate procedural protection. In *Sniadach*, unlike the present case, there was at least the opportunity for a subsequent hearing.

In *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S. Ct. 1011 (1970), this Court ruled that the termination of welfare benefits must be preceded by Due Process protections. It is notable that the protections that were offered, but found to be inadequate in *Goldberg*, were extensive compared to the nonexistent protections offered to a student in Ohio. In *Goldberg*, the welfare recipient was entitled to seven (7) days written notice of the intent to discontinue benefits, the right to a personal meeting with a case worker prior to the discontinuance, the right to file a written statement with a supervisor, and the right to a post termination hearing. The suspended student in Ohio has *no* protection.

In *Boddie* v. *Connecticut*, 401 U.S. 371, 378-79, 91 S. Ct. 780, 786 (1971), this Court stated:

> That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. (Footnote omitted)

In *Bell* v. *Burson*, 402 U.S. 535, 542, 91 S. Ct. 1586, 1591 (1971), this Court ruled that a hearing must precede the deprivation of a driver's license; this was despite the fact that procedures were in existence which were more protective than here. In *Bell* there was a prior hearing to determine whether the person whose license was to be revoked was properly identified. There is not even this minimal protection for the Ohio student.[24]

In several recent cases this Court has explicitly reaffirmed the principle that Due Process requires some form of a hearing prior to the deprivation of a protected interest. In *Fuentes* v. *Shevin*, 407 U.S. 67, 82, 92 S. Ct. 1983, 1995 (1972), this Court stated:

[24] Although the concurring opinion by Justices Powell and Blackmun in *Arnett* v. *Kennedy*, 42 U.S.L.W. 4513 (1974), denies the right of a full scale trial-type hearing prior to the dismissal of a civil service employee, it is notable that the employee had extensive pre-dismissal and post-dismissal rights in comparison to the students in the present case. Those rights included: (a) written notice of charges, (b) access to materials upon which charges are based, (c) the right to respond orally and in writing to the charges, and (d) the right to present affidavits. All of the above-listed rights accrued before dismissal. After dismissal the employee had the right to a full scale evidentiary hearing. The student in Ohio has absolutely no rights under 3313.66 ORS.

> The Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided *before* the deprivation at issue takes place. (emphasis added)

Finally, in *Board of Regents of State College* v. *Roth*, 408 U.S. 564, 570-71, 92 S. Ct. 2701, 2705 (1972), this Court stated:

> When protected interests are implicated the right to some kind of prior hearing is paramount.

This Court has recognized a limited exception to the above-stated rule whenever emergency circumstances exist.[25] The District Court recognized that if a narrowly defined emergency did exist prior procedures need not be utilized, but that a subsequent hearing must be held.[26] This is a reasonable approach; but, of course, the statute under attack is not limited to emergencies.

This Court's development of the prior hearing principle is obviously predicated upon a recognition that once the deprivation has taken place it is virtually impossible to make the person whole by a subsequent proceeding. As stated in *Armstrong* v. *Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, 1191 (1965):

[25] See, e.g., *Central Union Trust Co.* v. *Garvan*, 254 U.S. 554, 41 S.Ct. 214 (1921); *Phillips* v. *Commissioner of IRS*, 283 U.S. 589, 51 S.Ct. 608 (1931); *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U.S. 594, 70 S.Ct. 870 (1950).

[26] Appellees Motion To Affirm pp. 60-61. Indeed, the need for a hearing is increased when resort is to an emergency suspension; as Justice Frankfurter stated in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 171 "[The opportunity to be heard] should be particularly heeded at times of agitation and anxiety, when fear and suspicion impregnate the air we breathe" (Frankfurter, concurring).

> A fundamental requirement of due process is the "opportunity to be heard." *Grannis* v. *Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 783. It is an opportunity which must be granted at a meaningful time and in a meaningful manner.

As in the cases enunciating this Due Process principle, irreparable loss will be suffered through a suspension that cannot be completely remedied by a subsequent adjudication of innocence.[27] As the chief witness for the District, Norval Goss, conceded:

> Any absence from school can, of course, have negative effects and that would include suspension from school.[28]

It is not reasonably to be expected that a teacher will be fully able, or even likely motivated, to compensate for the time missed from school;[29] a day lost is a day lost no matter how one views it.

Further, although some mitigation of the psychological harms inherent in an unjust suspension might be expected from a subsequent hearing, it is not possible for the child to be made whole. For a child to be declared innocent of wrongdoing after having been irreparably excluded from school for a period of time would inevitably appear to be administrative double-talk. The potential psychological fall-out would seem to be far from speculative.

No reason, either administrative or substantive, thus exists why the "root requirement" of a prior hearing, denied by the Ohio Statute, should be dispensed with when

[27] It should, of course, be remembered that there is no provision for even a subsequent hearing in the case of a suspension under the Ohio legislation.

[28] Appendix, pp. 165-66.

[29] See, e.g., testimony of Floyd Horton, Appendix, p. 184.

a child is suspended from school — absent a narrowly defined emergency.

The basic purpose underlying the Due Process Clause is to avoid arbitrary, capricious, mistaken or authoritarian infringements of significant interests such as education. Recent studies and decisions show that just such infringements do take place in the educational sphere. In fact a major study recently published concludes that:

> There are strong indications, however, that suspension and expulsion have been used as weapons of discrimination, especially in resisting increased desegregation and in some instances during protests for more general students' rights.[30]

[30] The Student Pushout, Victim of Continued Resistance to Desegregation, published by the Southern Regional Council and the Robert F. Kennedy Memorial, 1973, p. VIII (hereinafter Study). The statistics supporting this conclusion show a startling disproportion of minorities being suspended and/or expelled. In Little Rock, Ark. in 1971-72 blacks comprised 33.4% of the high school students. 79.9% of the students suspended were black. (p. 2 Study). Although the Richland County, South Carolina (Columbia) District was almost evenly split between blacks and whites in the first half of the 1972-73 school year 1,519 blacks were suspended while only 445 whites were similarly treated (77% black, 23% white) (pp. 3 & 4 Study). In Dallas, Texas a review of HEW 101 Forms showed that 9.1% of the blacks; 6.4% Chicanos and 4.9% of the whites were expelled in 1971-72. (Study, p. 4). In fact an analysis by the Office of Civil Rights of HEW of these forms nation-wide concluded that "the expulsion rate for minority students was twice that for non-minority students, and the expulsion rate for black students was three times that for non-minority students." (Study, p. 5). Indications are that this is not merely a Southern Desegregation Phenomenon. In Omaha, Neb. in 1970-71, 8% of the minority children were expelled from school while only 2.1% of the non-minority children were expelled (Study, p. 6). Other studies have noted the same disproportions. In 11 Integrated Education, 30 "Race and Suspension in New Orleans" it was reported that 15.3% of the black population was suspended in 1971-72 while 8.8% of the white population was suspended. See also the Report of the Select Committee on Equal Educational Opportunity, United States Senate, "Toward Equal Educational Opportunity." (Dec. 31, 1972) at p. 140.

A recent decision by the Commissioner of Education of New York State acknowledged that handicapped children were being improperly suspended from the schools of New York City. *In The Matter of The Appeal of Reid et al.*, No. 8742, New York State Education Department, filed Nov. 26, 1973.

A brief review of some of the leading suspension-expulsion cases shows a clear pattern of the misuse of these sanctions to stiffle First Amendment Rights. In fact, this Court's decision in *Tinker* v. *Des Moines Independent Comm. School Dist.*, 393 U.S. 503, 89 S. Ct. 733 (1969), arose from a suspension, and the decision in *Papish* v. *Board of Education*, 410 U.S. 667, 93 S. Ct. 1197 (1973) emanated from an expulsion. See also, *Quarterman* v. *Byrd*, 453 F.2d 54 (4th Cir. 1971); *Shanley* v. *Northeast Ind. Sch. Dist.*, 462 F.2d 960 (5th Cir. 1972); *Scoville* v. *Bd. of Ed.*, 425 F.2d 10 (7th Cir. 1970), and *Hatter* v. *Los Angeles City High School Dist.*, 452 F.2d 673 (9th Cir. 1971).[31]

In sum, school officials are not immune from the same human vices or foibles that have given rise to a recognition of the need for Due Process protection in other areas. They can and do make mistakes, they can and do act arbitrarily or discriminatorily. Students should not be deprived of an education without at least being afforded

[31] Professor Charles Allan Wright, in discussing the need for procedural protections for the disciplined student observes that, "without procedural safeguards the substantive protection would be virtually useless. There would be no point in an elaborate doctrine that students may be disciplined for disruptive action but not for mere expression if some administrators were permitted to make an *ex parte* and unreviewable determination that particular behavior was 'disruptive action' and that a particular student had participated in it! In a system of ordered liberty, therefore, it is essential that substantive rules we applied through fair and reliable procedures." Wright, "The Constitution on Campus," 22 Vand. L.R. 1027, 1059-60 (1969),

some degree of procedural protection.[32] It is educationally counter-productive to permit arbitrary action without constitutional protections. As this Court stated in *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 637, 63 S. Ct. 1178, 1185 (1943):

> The Fourteenth Amendment as applied to the States, protects the citizen against the State itself and all its creatures — Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

To permit suspensions without providing constitutional protections against arbitrariness surely teaches youth to discount important principles of our government as mere platitudes.

IV. The District Court Correctly Ruled That "The Magnitude of the Deprivation Affects the Formality and Comprehensiveness of the Due Process Safeguards; It Does Not Affect the Basic Fact That These Safeguards Shield the Student From Arbitrary or Capricious Interference With His Right to Education."[33]

[32] It is true, as Appellants note, that no evidence was before the lower court concerning racial discrimination or First Amendment infringements. Yet the clear evidence of misuse of suspension procedures points up the need for procedural protections in general; and, of course, there was evidence before the lower court of arbitrary, mistaken suspensions.

[33] Appellees' Motion To Affirm, p. 55.

This Court has forcefully and consistently held that the extent of deprivation of a protected interest does not affect the root requirement of some form of prior hearing; absent a finding of *de minimis* harm, not applicable in a school suspension setting, the element of harm is properly considered only in determining the formality of the procedures required.

In *Boddie* v. *Connecticut*, 401 U.S. 371, 378-79, 91 S. Ct. 780, 786 (1971), this Court stated:

> The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings. That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interests, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. (footnote omitted)

In *Fuentes* v. *Shevin*, 407 U.S. 67, 85-86, 92 S. Ct. 1983, 1997 (1972), this Court, in an observation that has special poignancy in the immediate case stated:

> The Fourteenth Amendment draws no bright lines around three-day, 10-day or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause. *While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not*

> *decisive of the basic right to a prior hearing of some kind.* (emphasis added)

Finally in *Roth, supra*, this Court stated:

> . . . and a weighing process has long been a part of any determination of the *form* of hearing required in particular situations by procedural due process. 408 U.S. at 570.

In a footnote to this quote, this Court made clear just when the weighing process takes effect. This Court stated:

> The Constitutional requirement of opportunity for *some* form of hearing before deprivation of a protected interest of course, does not depend upon such a narrow balancing process. 408 U.S. at 570, n. 8.

The District has cited several cases which hold that when 'grievous loss' is suffered Due Process protections must apply.[34] This does not contradict the above statements. If 'grievous loss' means great loss then surely it is encompassed within the ambit of these cases. The District however argues that at a minimum great loss (grievous loss) must be suffered before Due Process protections apply. This interpretation contradicts the above holdings and ignores several other recent statements indicating what the correct threshold of injury should be.

In *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 342, 89 S. Ct. 1820, 1823 (1969), Mr. Justice Harlan stated that any deprivation that could not be characterized as "*de minimis*" must be preceded by a hearing. This concurring view was adopted and reiterated by the majority

[34] *Morrissey* v. *Brewer*, 408 U.S. 471 (1972); *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

in *Fuentes* v. *Shevin, supra,* 407 U.S. at 90, n. 21, where it was stated:

> The relative weight of liberty or property interests is relevant, of course, to the form of notice and hearing required by due process. See, e.g., *Boddie* v. *Connecticut,* 401 U.S. 371, 378, 91 S. Ct. 780, 786, 28 L. Ed. 2d 113 and cases cited therein. But *some* form of notice and hearing — formal or informal — is required before deprivation of a property interest that "cannot be characterized as de minimis." *Sniadach* v. *Family Finance Corp., supra,* 395 U.S., at 342, 89 S. Ct. at 1823 (Harlan, J. Concurring).

The approach suggested by the School District would throw the entire law of Due Process into chaos, result in increased litigation and burden governmental officials with an impossible task of determining when process is due. It would appear to be a virtually impossible mental task to determine whether an interest is so important, and an invasion so serious, as to require a prior hearing when those exact same elements must be weighed in determining the form of the hearing. It is submitted that the present flexibiity as to form creates a degree of uncertainty for both government officials and those affected by governmental activity that would become an impossible quagmire if it were carried over into the basic question of whether any hearing is required. This Court's previously-cited decisions wisely avoid this result.

There can be little question that the deprivation of education for even a short time, creates more than *de minimis* harm. When one considers the certain harm from loss of schooling and the substantial likelihood of collateral consequences it becomes manifestly irrational to argue against the need for procedural protections.

The direct, immediate, and certain effect of a suspension is that the child is excluded from education for a period of time. For the marginal child who is most likely to be affected by a mistaken or arbitrary suspension, several days of missed schooling might well defeat any chance he has of keeping up with the class; even for other children, the exclusion from school is unlikely to be compensated. Not surprisingly, the record discloses that overworked teachers are unlikely to take the time to help the student overcome his absence;[35] even if such efforts were made, the important give and take of classroom discussion is certain to be lost.[36] The chief witness for the District conceded the possibility of educational harm.[37] In terms of grades, the standard practice in Columbus, as in many districts, is to give zeros for all work missed.[38]

The potential psychological harm was well documented at the trial. The District Court summarized the unrefuted testimony of two prominent Ohio Psychologists as follows:

> The effects of suspension are not uniform. Most suspended students respond in one or more of the following ways:
>
> 1. The suspension is a blow to the student's self-esteem.
> 2. The student feels powerless and helpless.
> 3. The student views school authorities and teachers with resentment, suspicion and fear.

---

[35] See testimony of Floyd Horton, Appendix, p. 184.

[36] See *Sweatt* v. *Painter,* 339 U.S. 629, 634 (1950); *McLaurin* v. *Oklahoma State Regents,* 339 U.S. 637, 641 (1950); and *Brown* v. *Board of Education,* 347 U.S. 483 (1954), recognizing the immeasurable importance of classroom discussion and interchange.

[37] See testimony of Norval Goss, Appendix, pp. 165-66.

[38] Appendix, pp. 164-65.

4. The student learns withdrawal as a mode of problem solving.
5. The student has little perception of the reasons for the suspension. He does not know what offending acts he committed.
6. The student is stigmatized by his teachers and school administrators as a deviant. They expect the student to be a trouble maker in the future.

A student's suspension may also result in his family and neighbors branding him a trouble maker. Ultimately repeated suspension may result in academic failure.[39]

A school suspension, regardless of length, can also have negative consequences on college admissions and upon future employment opportunities. A survey taken by the Students' Counsel in the preparation of this brief revealed that four (4) of twelve (12) randomly chosen Ohio Colleges ask expressly on undergraduate application forms whether the applicant has ever been suspended from school.[40] In addition, virtually all colleges asked for tran-

[39] Appellees' Motion To Affirm, p. 40. See testimony of Dr. Robert Woody, Appendix, p. 154 *et seq.* and Dr. Herbert Rie, Appendix, p. 171 *et seq.* See also, a sampling of the literature in support of these theses; Flowers, C.E., "Effects of An Arbitrary Accelerated Group Placement on The Tested Academic Achievement of Educationally Disadvantaged Students." Unpublished Doctoral Dissertation, Teachers College, Columbia Univ., 1966; Masling, J., "Differential Indoctrination of Examiners and Rorschach Responses," 29 *Journal of Consulting Psychology*, 198-201 (1965); Merton, R.K., "The Self-Fulfilling Prophecy," 8 *Antioch Review* 193-210 (1948); Rosenthal, R., *Experimenter Effects In Behavioral Research* (New York: 1966); Rosenthal, R. and Lenore Jacobson, "Teachers' Expectancies: Determinates of Pupils' I.Q. Gains," 19 *Psychological Reports* 115-118 (1966).

[40] The application forms for the following schools were received. A "yes" indicates that they expressly ask information about High School suspensions. A "no" indicates that nothing is expressly asked: Antioch—yes; Bowling Green Univ.—no; Case Western—yes; Univ. of Cincinnati—no; Cleveland State—no; Hiram—no;

scripts and asked for school officials to evaluate the student's character and fitness. A suspension might well appear on a transcript or be relied upon by the school official making such an evaluation.[41] Furthermore, the record indicates that students suspended at certain times of the year may irremediably miss certain tests, contests or conferences which have a bearing on college admissions and/or the possible receipt of financial aid.[42] A suspension thus has the substantial probability of causing negative consequences for the college applicant.

The student who decides to seek employment after high school may also suffer harm from an unjust suspension. A review of the basic form book for personnel officers indicates that high school reference checks often ask about the disciplinary problems of the applicant while he was a student.[43] A school official working from a record might well report improper suspensions and thus limit the possibility of employment for the student.

Several other potential consequences that may flow from a suspension have been noted by various studies. One study has observed that:

> While hard data is very rare, a substantial cause and effect relationship does appear to exist between students who are suspended or expelled, on the one hand,

Oberlin—no; Kent State—yes; Ohio State—no; Otterbein—no; Ohio Wesleyan—yes; Ohio Univ.—asked about College dismissal; The one non-Ohio school surveyed, Harvard College, expressly asks the applicant if he has been suspended.

[41] One example of how a suspension may continue to haunt a student, irrespective of its propriety, is shown by the student records of three of the nine named Plaintiffs. Their records have express notations indicating the existence of the suspensions. See Appendix, at pp. 219, 244 and 256.

[42] Testimony of Floyd Horton, Appendix, pp. 182-88.

[43] Marting, AMA Book of Employment Forms, American Management Assn., 1967. See especially p. 423 *et seq.*

and students who become labeled as dropouts on the other. This is an area in urgent need of extensive in-depth research.[44]

Others have noted that students not attending school have an increased likelihood of police contact. A summary of the results of a Public Hearing in Illinois, at which twenty-six child service professionals testified, concluded that:

> Those testifying based their remarks on their experience and observation, consequently there are many different and divergent opinions noted throughout the testimony.
> It was made clear however, the juveniles out of school as the result of truancy, expulsion or suspension have police contact for any number of offenses.[45]

The Student-Appellees do not contend that every one of the potential harms listed-above will happen to every suspended student. In fact, only the educational loss is certain to happen. There is however a substantial probability that any one or combination of these harms may result from a suspension.[46] Not one of these harms, especially the educational, can be characterized as *de minimis*.

[44] "The Student Pushout: Victim of Continued Resistance to Desegregation," Published by the Southern Regional Council and the Robert F. Kennedy Memorial, 1973.

[45] Remarks and excerpts from Public Hearings on Truancy & Expulsion, Educational Service Region, Cook County, Chicago, Illinois. Dec. 13 and 14, 1972, published in ERIC ED 078926.

[46] It is notable that the "harms" envisioned flowing from a garnishment, *Sniadach*, *supra*, 395 U.S. 337 (1969), welfare cutoff, *Goldberg*, *supra*, 397 U.S. 254 (1970), or driver's license revocation, *Bell*, *supra*, 402 U.S. 535 (1971), were not certain to follow. Certainly not every employee had his back driven to the wall by a garnishment or was in dire straits as a result of a welfare cut-off or license revocation. In fact, it seems more certain that a suspension will cause some harm than those acts.

Various lower courts have noted the existence of these harms. In *Hatter* v. *Los Angeles City High School District*, 452 F.2d 673, 674 (9th Cir. 1971), the Ninth Circuit noted that evidence of disciplinary action in a student's records may "threaten prejudice with respect to college admissions and future employment." The court in *Sullivan* v. *Houston Indep. School Dist.*, 307 F. Supp. 1328, 1338 (S.D. Tex. 1969), noted that "collateral consequences" may flow from a suspension.

In *Vail* v. *Board of Education of Portsmouth School District*, 354 F. Supp. 592, 603, n. 4 (D.N.H. 1973), the Court found that, in addition to the immediate educational consequences:

> . . . the record of the suspension may jeopardize a student's future employment and educational opportunities as guidance counselors prepare student recommendations after having examined the student's permanent record file which contains the notice of suspension.

In *Shanley* v. *Northeast Ind. Sch. Dist., Bexar County, Tex.*, 462 F.2d 960, 967, n. 4 (5th Cir. 1972), the Court, while abjuring a formula for determining whether a harm is major or minor, found that:

> . . . a suspension of even one hour could be quite critical to an individual student if that hour encompassed a final examination that provided for no "make-up." We are convinced here that the three-day suspensions issued to these five high school seniors, who were in the process of applying to and inter-

viewing for college admission and for scholarships, constitute a justiciable penalty under any "major/minor" dichotomy.

See also *Breen* v. *Kahl*, 296 F. Supp. 702, 707 (W.D. Wisc. 1969), *aff'd*, 419 F.2d 1034 (7th Cir. 1969).

Harm, far exceeding *de minimis*, is thus substantially certain to flow from a suspension, irrespective of length. The degree of harm and the certainty of harm undoubtedly increases substantially if the suspension is viewed as arbitrary, capricious or mistaken. Some form of prior procedural protection is manifestly necessary to avoid or mitigate these harms.

V. The Lower Court Cases Starkly Show the Need for a Prior Hearing Rule.

The lower court decisions, insofar as they provide guidance for this Court, present an irrefutable argument for a prior hearing rule. These cases, by their very inconclusiveness and judicial arbitrariness show the unworkability of a conceptual framework that attempts to measure harm and to place such measurement into a formula for determining whether a prior hearing is required. The decision by the lower court in the present case in its reliance upon this Court's precedents presents a stark contrast to the judicial uncertainty found in many other decisions.

Most lower court cases until recently have attempted to measure harm by the length of time out of school. While harm unquestionably increases as the exclusion grows longer, the evidence before the District Court in this case, and the other indicia of harm presented, *supra*, are clear proof that harm is not purely or even mainly a function of time. An unjust one day suspension under

certain circumstances can be devastating. Further, as the cases show, the equating of time with harm results in a purely subjective and arbitrary determination.

The recent law of the Fifth Circuit, the Circuit which has heard more suspension cases than any other, points up this problem. In *Black Students of N. Ft. Meyers Jr.-Sr. High School* v. *Williams*, 335 F. Supp. 820, *aff'd per curiam*, 470 F.2d 957 (5th Cir. 1972), the Court held that a suspension of ten days was a suspension for "a substantial period of time" and thus was in violation of the Due Process Clause if not preceded by a hearing. In *Murray* v. *West Baton Rouge Parish School Board*, 472 F.2d 438 (5th Cir. 1973), the Court ruled that suspensions that were for not "more than a few days," 472 F.2d at 443, need not be preceded by a hearing. In *Shanley* v. *Northeast Ind. Sch. Dist., Bexar County, Tex.*, 462 F.2d 960, 967 n. 4 (5th Cir. 1972), as previously noted *supra*, the Court ruled that a three-day suspension under the facts of the case was of such a magnitude that it constituted a "Justiciable Penalty." The dilemma is manifest. It is a subjective and necessarily arbitrary judicial determination to say that after a given number of days, such harm gives rise to the need for a prior hearing. It is unworkable to have a determination made on a case by case basis. Further, the length of the suspension is only one ingredient in determining harm. It is submitted that only a prior hearing rule makes sense and avoids this dilemma.

The pattern discerned in the Fifth Circuit is a pattern that can be traced nationwide. In the District of Columbia, for example, a student may not be suspended for more than two (2) days without being given a rather extensive hearing, *Mills* v. *Board of Educ. of District of Columbia*, 348 F. Supp. 866, 878 (D.D.C. 1972), while a decision in the Tenth Circuit, *Hernandez* v. *School Dist.*

No. One, Denver, Colo., 315 F. Supp. 289 (D. Colo. 1970), rules that a statute which permits suspension for up to twenty-five days without any hearing does not violate Due Process.

Compared with this subjective ill-conceived search for a necessarily arbitrary number of days, the District Court's holding in the present case presents a stark, reasoned contrast. The Court below stated:

> It is important to remember that even though the interference with the liberty of a right to education is limited, the student's right to be treated with procedural fairness prior to a deprivation of the right to an education is not lost. The magnitude of the deprivation affects the formality and comprehensiveness of the due process safeguards; it does not affect the basic fact that these safeguards shield the student from arbitrary or capricious interference with his right to education.[47]

Several recent decisions are in substantial accord with the ruling in this case. In *Vail* v. *Board of Education of Portsmouth School District*, 354 F. Supp. 592, 603 (D. N.H. 1973), the Court ruled that prior to any suspension an "informal administrative consultation" must be held. In *Pervis* v. *La Marque Independent School District*, 466 F.2d 1054, 1058 (5th Cir. 1972), the Court stated that:

> When the punishment to be imposed is minimal, *full* compliance with the requisites outlined in *Dixon* is not required. See note 3, *supra*. Moreover it may be that a student can be sent home without a hearing for a short period of time if the school is in the throes of violent upheaval. But even in such a case, a hearing

[47] Appellees' Motion To Affirm, p. 55.

> would have to be afforded at the earliest opportunity. Cf. *Dunn* v. *Tyler Independent School Dist.*, 5 Cir., 1972, 460 F.2d 137. (emphasis added)

In sum, the lesson to be learned from most of the lower court decisions is that any attempt to inject the question of harm into the question of whether any prior hearing should be given as opposed to the determination of the form of a hearing is doomed to result in an impossibly subjective determination. This points up the reasonableness of retaining this Court's long standing prior hearing rule. Several of the more recent decisions, in addition to that of the instant case, support this proposition.

VI. A Statute Which Permits a Deprivation of a Protected Interest Without Also Prescribing Constitutional Procedures Is Facially Invalid.

This Court has long held that a statute which permits the deprivation of a protected interest without also prescribing adequate Due Process protection is facially invalid. Ohio Revised Statute 3313.66, by providing for a deprivation of education without providing procedural safeguards for the student is thus invalid on its face.

In *Coe* v. *Armour Fertilizer Works*, 237 U.S. 413, 35 S.Ct. 625 (1915), a Florida statute permitted a judgment creditor to execute on the property of a stockholder of a corporation which had no assets. The statute did not specifically prescribe constitutionally adequate procedural protections for the stockholder. This Court held that this lack of specificity voided the statute. Although recognizing that in given cases, and indeed in the case before it, the stockholder could receive adequate notice and opportunity to challenge the execution, the Court nevertheless held the statute violated Due Process. In so holding, this Court quoted from several earlier decisions requiring adequate

procedures to be spelled out in the statute permitting the deprivation. See especially the discussion at 237 U.S. 629.

This same principle was recently implicitly recognized in *Wisconsin* v. *Constantineau, supra,* 400 U.S. 433 (1971), where this Court struck down, as facially invalid, a statute permitting an invasion of the liberty of reputation without also prescribing adequate procedures.

Likewise in *Fuentes* v. *Shevin,* 407 U.S. 67, 92 S.Ct. 1983 (1972), the Florida and Pennsylvania replevin statutes were held to be facially defective for they permitted an invasion of a protected property interest without prescribing adequate procedures.

Thus, given the protected nature of education in Ohio, and the deprivation thereof permitted by ORS 3313.66 it is manifest that the Section is facially invalid for failing to prescribe constitutionally sufficient protections.

Conclusion

Both reason and this Court's ample precedents require a holding that a school suspension without any form of notice or hearing violates the Due Process Clause of the Fourteenth Amendment.

Under express holdings of this Court, and under the rationale used to support those holdings, education in Ohio must be considered to be a protected interest. Further, common sense and the evidence in the record lead inexorably to the conclusion that a suspension creates the sort of stigma that should be protected against.

This Court has invariably required that a hearing of some form must precede the deprivation of a protected interest or the imposition of a stigma. No reason exists for a variation from this requirement.[48] We would only note that it is not the deprivation of a minor interest

[48] The issue here, of course, is whether a student can be suspended without any hearing. If the Court feels compelled to discuss the form of the hearing, we would suggest that once school officials have been given the latitude to address the "extraordinary situation" i.e., emergency, no reason exists in fact to deny a student, not within the ambit of the extraordinary situation, the benefit of real, meaningful procedural safeguards. Moreover, as the lower court noted, the student summarily suspended pursuant to an extraordinary situation should promptly be given a subsequent hearing.

that is herein involved but rather an interest so important that this Court has observed that:

> In these days, it is doubtful that any child may reasonably be expected to succeed life if he is denied the opportunity of an education. *Brown* v. *Board of Education,* 347 U.S. 483, 493 (1954).

A school suspension, even of short duration, has the potential of seriously jeopardizing this opportunity.

It is notable that virtually all of the major national educational associations endorse the concept of fundamental protection for the disciplined student. The National Education Association has resolved that:

> Procedures may vary in formality with the gravity of the offenses or of the sanction to which an accused person is liable. In no case may the student's rights be abridged or denied, and in no case may the same person act as both judge and prosecutor.[49]

The Joint Statement on Rights and Freedoms of Students[50] notes that while "practices in disciplinary cases may vary in formality with the gravity of the offense and the sanctions which may be applied," nevertheless,

[49] NEA Resolution 60-12, Published in the "Code of Student Rights and Responsibilities," NEA, Washington, D.C., 1971 at p. 29.

[50] Subscribed to by the Association of American Colleges, the American Association of University Professors, the National Student Association, the National Association of Student Personnel Administrators, the National Association of Women Deans and Counselors, and the American Association of Higher Education.

> In all situations procedural fair play requires that the student be informed of the nature of the charges against him, that he be given a fair opportunity to refute them, that the institution not be arbitrary in its action and there be a provision for appeal of the decision.[51]

The American Association of School Administrators recently resolved that suspensions and expulsions should not be utilized unless the "health and safety of other students or personnel in all schools is jeopardized."[52]

In sum, this Court's precedents and good sense require that procedural protections precede exclusion from school. Such protection is minimally necessary to prevent the arbitrary, mistaken or capricious deprivation of the all-important right to education. Affirmance of the District Court's decision would achieve this goal.

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[51] Found in 53 American Assn. of University Professors Bulletin 365, 368 (1967).

[52] Vol. 7, No. 40 Education Daily at p. 5 (Feb. 27, 1974).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-898

NORVAL GOSS, ET AL., *Appellants,*

v.

EILEEN LOPEZ, ET AL., *Appellees.*

On Appeal from the United States District Court for the Southern District of Ohio

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v.

EILEEN LOPEZ, ET AL., *Appellees.*

On Appeal from the United States District Court for the Southern District of Ohio

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BRIEF AMICI CURIAE

For the Children's Defense Fund of the Washington Research Project, Inc. and the American Friends Service Committee.

INTRODUCTION

We present this brief in support of the Appellees with the consent of counsel for both the Appellants and the Appellees.

We rely on the Appellees' treatment of this Court's jurisdiction and of the constitutional and statutory provisions involved.

The opinion of the District Court, in this case, is now reported as *Lopez* v. *Williams,* 372 F.Supp. 1279 (S.D. Ohio 1973).

QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment requires public school officials, who "suspend" students as punishment for alleged misconduct, to provide an opportunity for a fair hearing to determine the truth of the allegations on which the "suspension" is based?

INTEREST OF AMICI

The Children's Defense Fund was established in 1972 as part of the Washington Research Project, Inc. It is committed to achieving systematic reforms on behalf of the Nation's children. During the last year, it has conducted a major study of the exclusion of children from public schools. Its staff, and staff of the American Friends Service Committee, visited over 8,000 households to determine how many children are out of school and why; it has discovered that millions of children are now not in school and that a major reason is the extraordinarily frequent and casual use of disciplinary "suspensions" by school officials. The Children's Defense Fund has concluded, therefore, that the massive problem of children out of school will not be solved until the "suspension" process in America's schools is corrected to screen out countless arbitrary "suspensions" and to ensure fair treatment of its victims. In the late Summer of 1974, the Children's Defense Fund will publish the findings and conclusions of its study in a book to be entitled *Children Out of School in America.*

The American Friends Service Committee has, since 1917, engaged in religious, charitable, social, philanthropic and relief work on behalf of the several branches and divisions of the Religious Society of Friends in America. The American Friends Service Committee, though it cannot speak for all Friends, has a vital interest in this litigation because of Friends' belief in the equality of all human beings in the sight of God. This testimony has led the American Friends Service Committee to commit a significant portion of its resources to deal with those aspects of our social order which result in exclusion and denial of rights. Major attention has been given for the last two decades to aspects of school systems which diminish the opportunity of any student to acquire adequate education. Specifically, our Southeastern Public Education Program is directly concerned with the suspension of students from school. We work with students, parents, teachers and school administrators in the matter. We have carried out investigatory work on the subject of suspensions and have developed materials to broaden citizen understanding of the critical issues involved.

STATEMENT OF THE CASE

This is a class action. The Appellees are nine children and nine parents. They represent a class of thousands of children: children "suspended" from the public schools of Columbus, Ohio between February 1971 and August 1973.

The children suffered the most serious type of deprivation that a public school system can impose. They were deprived of schooling. An official believed that they had done some misdeed; he ordered them to get

out of school; he ordered them to stay out for up to two weeks. School classes went on without them; the schools did not allow them to continue their studies; the schools did not permit them to make up what they missed; the schools took no responsibility for them while away. This, in current jargon, was a "suspension".

The crux of this case is not *that* the children were "suspended". It is *how* they were "suspended". They were denied any opportunity—before, during, or after "suspension"—to persuade anyone that their removal from school was mistaken.

A.

The power of Ohio public school officials to throw children out of school is set forth in Section 3313.66 of the Ohio Revised Code. It empowers them to act in two ways: (1) a school superintendent or executive may "expel" a child for an indefinite period not to extend beyond the current semester; or (2) a school superintendent, executive or principal may "suspend a pupil from school for not more than ten [school] days." There is a notice provision. It applies to both "expulsion" and "suspension". When a child is "expelled" or "suspended", school officials must provide notice "in writing of such expulsion or suspension including the reasons therefor" within twenty-four hours. The Code, however, distinguishes between "expulsion" and "suspension" when it comes to a hearing. When a child is "expelled", he or his parent is entitled to a hearing—not a prior hearing, not a prompt hearing, but an eventual hearing—before the Board of Education. But, when a child is "suspended", there is to be no hearing at all.

The Code, therefore, grants virtually unqualified "suspension" power to school officials: An official may wait until he has already thrown out a child to give a reason. Even then, he need not listen to any suggestion that he was mistaken about the facts, or that "suspension" should not apply in the particular case.

The statute, by the same token, leaves "suspended" children and their parents helpless: They are allowed no opportunity to be heard, by anyone, at any time.

B.

Presumably, under State law, local school authorities are free to supplement the procedure (or lack of procedure) set forth in the Code. The school authorities of Columbus, then, had the option to require notice that is prompt and to mandate a hearing that is both prompt and fair.

Yet the Administrative Guide of the Columbus Public Schools does no more than adopt the provisions of the Code. Its Section 1010.04 simply states: "Pupils may be suspended or expelled from school in accordance with the provision of Section 3313.66 of the Revised Code." Thus it, too, empowers school officials to "suspend" children unilaterally, with notice of reasons delayed, and with no hearing addressed to those reasons.

C.

The "suspension" practice of Columbus school officials followed, in the main, the procedure marked out by the State Code and the local Administrative Guide. They did modify it to some extent. "Suspension", however, remained—in practice, as on the statute books—a thoroughly unilateral process.

Evidence, in the record, on "suspension" practice breaks down into three categories: (1) administrative memoranda issued by the Columbus Department of Pupil Personnel, (2) a description of the "usual" process used during the time at issue here, and (3) testimony about the actual process used to "suspend" the Appellees in the Spring of 1971. The particular facts of the Appellees' own "suspensions" are not the only relevant evidence. This is a class action that includes children "suspended" from the Columbus public schools over a two-and-one-half year period. Thus general "suspension" practice, common to the whole class, is of central importance.

(1) In the two-and-one-half years covered by this case, the Columbus Department of Pupil Personnel issued two memoranda on "suspensions". They were addressed to school principals, the officials empowered by the Code to impose "suspensions". They outlined the process that should be used to remove children from the schools.

The first of them, issued in August 1973, advised principals to follow the procedure set forth in the Code and Administrative Guide. It also added two provisions. It advised that, at the time of the "suspension", the principal should notify the child of the "exact reason and the term of the suspension." Also, the memorandum advised that, at some unspecified later time, the principal should "be available for a conference if one is requested by the parent."[1] These two provisions served a narrow purpose.

[1] The memorandum is quoted in full in the opinion of the District Court. *Lopez* v. *Williams*, 372 F.Supp. 1279, 1282 n. 1 (S.D. Ohio 1973).

The purpose of the provision for prompt notice was to communicate, quickly, the basis for the "suspension". It was to make the principal reveal, quickly, what he thought the child had done. But it left the child still with no chance to answer. It simply facilitated one-way communication.

The purpose of the provision for a post-"suspension" conference was not to open up the basis for the "suspension" to critical examination. The District Court found: "The conference . . . was not a fact-finding hearing, but rehabilitative in nature."[2] At the conference, the only item on the agenda was the child's future program. *See* pages 11-12 below. It was not meant to allow anyone to show that the "suspension" —and the supposed need for "rehabilitation"—rested on a mistake.

When the Department next issued a memorandum, in February 1973, it did not add to these provisions. Rather, it left out one of them. It left out even the provision for a conference between the principal and the parent.[3]

To be sure—only one week before trial of this case—the Department issued a new memorandum. In July 1973, for the first time, it went a bit, though not far, beyond mere one-sided reforms: It advised that, before removing a child from school, a principal should discuss the alleged offense with him; and it provided that if "any suspension is subsequently found to be erroneous, all reference to the suspension shall be expunged

[2] *Id.* at 1302. *See id.* at 1283.

[3] *Id.* at 1282-1283 n. 1.

from the school's records."[4] But this new memorandum, whatever it might eventually mean in practice, is *irrelevant* here.

The District Court ruled that the class action, at issue here, could not extend to this proposed change in procedure: "Plaintiffs have not engaged in conduct which would subject them to the newly adopted suspension procedures. Thus, they cannot sue on their own behalf or on the behalf of others for relief from the newly adopted suspension procedures. See *Hall* v. *Beals*, 396 U.S. 45, 48-49."[5] Children, after August 1973, might possibly be treated somewhat more fairly; but that hardly affects the validity of "suspensions" before that time or the need for expungement of those "suspensions" from the record.[6]

(2) Thus, during the time span at issue here, the "suspension" process mandated by the Code and the Administrative Guide was preserved basically intact by the central school authorities: There still was to be no hearing of any kind at any time. That left "suspension" procedures, in practice, to individual school principals.

[4] *Id.* at 1283-1284.

[5] *Id.* at 1296 n. 11. The Appellants do not now challenge the definition of the class by the District Court.

[6] The District Court said: "Defendants argue that the suspension guidelines adopted by the Department of Pupil Personnel on July 10, 1973 moot the constitutional question presented. . . . The new guidelines have no impact upon the constitutional claims of the named plaintiffs or any member of the class they represent who was suspended prior to July 10, 1973. If their suspensions were imposed without due process of law, they have a right to a declaration that the suspension procedure was unconstitutional and to the expunction of any reference to the suspension from all records maintained by the Columbus Public Schools. There is a present, live controversy, and not a moot action. *See,* Golden v. Zwickler, 394 U.S. 103 . . . (1969)." *Id.* at 1296.

Their power was formidable. The record includes a lengthy deposition of Phillip Fulton, principal of a Columbus high school, describing the "usual" procedure that principals used to "suspend" children. It indicates that, on occasion, principals may have supplemented the official "suspension" process on their own: They sometimes "discussed" the "suspension" with the child before removing him from school, and they sometimes held a "conference" with the parent afterwards. (App. 111-114.) But, in practice, the process remained unilateral.

The permissible grounds for "suspension" were not "spelled out in any single system or document." But the schools did "have school rules." These, along with the "rules and regulations of the Board of Education—State, Federal, City law—could all be areas that could be grounds for suspension." The students were "apprised of school rules" through "school assemblies, announcements on the P.A. system, school handbooks, school bulletins, memos sent to parents, council meetings." (App. 66-67, 105.)

"Suspensions" generally were based on the word of a teacher, alleging that a pupil had committed a rule violation not witnessed by the official with authority to remove the child from school:

> "The majority of times the incident does not occur with an administrator. It occurs in a situation where a teacher refers it to administration."

(App. 112.) Despite the fact that the Code and the Administrative Guide give "suspension" power only

to a principal, it would often be someone other than the principal who would evaluate the teacher's allegations:

> "It would depend upon who was available, who the teacher may refer the incident to. It can be one or the other of the administrators."

(App. 112.) (*See* App. 118.)

At that point, the administrator would often call in the pupil. The administrator, according to Mr. Fulton, would often listen to what the child had to say. But, if the child and the teacher disagreed as to what had happened, *the administrator would automatically believe the teacher:*

> "If there is a large discrepancy where the student would deny [the teacher's version of events] and the teacher would confirm it, then we would react upon this information according to what the teacher tells us."

(App. 112-113.) Any preliminary "discussion" with the pupil was, therefore, *pro forma*. His word was presumed noncredible. The presumption, apparently, was irrebuttable:

> "Q. Now, the procedure that you were describing there is the procedure you used in ordinary situations? I mean, they are used not when the school is going up in flames, but in an ordinary suspension type of situation? A. Right.
>
> Q. Now, you mentioned that if the student contested what the teacher said, the teacher then would be called in, or occasionally the teacher would be called in? A. Right.
>
> Q. What would happen if there was still dispute? A. Then the teacher's word would be the deciding factor."

(App. 113.)

Thus the one-sidedness of the process, inherent in the Ohio Code and the Columbus Administrative Guide, was routine. Even if a child had notice of the reason for his "suspension", even if he had a chance to speak up for himself, he ran up against an irrebuttable presumption that the allegations against him were true. The child might be allowed to speak. But what he said would not be considered. This was not a "hearing":[7] The validity of the "suspension" was, in reality, not open to question at all.

Often, according to Mr. Fulton, a later "conference" would also be held with the child's parent. But it, too, was far from a hearing on the underlying facts of the "suspension". Indeed, those facts were not even discussed. The official version of events was simply assumed to be true:

> "Q. Traditionally, what is discussed at these conferences? A. The problem, the individual, we talk about their school record. We get their entire school record. We talk about their academic problems if they exist. We talk about their potential. We talk about their goals. It is a conference to remedy the problem and you try to find a solution so that the student is successful in his schooling.
>
> "Q. Is it a conference to verify the facts supporting this suspension, or is it more a conference to determine future placement? A. No, because almost always placement is right back where they are. It is to communicate with the parent, as part of my responsibility, the problem that exists and ask for their help. We inform them and then find out what directions we can take that will eliminate the need for further problems."

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[7] *See* page 49 below.

(App. 114.) At the "conference", the allegations against the child, on which the "suspension" was based, were not to be contested; they were not to be questioned; they were not even to be discussed.

(3) The "suspensions" of the Appellees in the Spring of 1971 revealed this process at work. The circumstances were somewhat unusual: circumstances that made mistaken "suspensions" particularly likely and time for prior consideration particularly short. But the "suspension" process was entirely "usual": It was entirely unilateral.

The Appellees' "suspensions" took place during a time of some unrest in Columbus secondary schools following "Black History Week." On occasion, many pupils left their classrooms, and many pupils participated in large (overwhelmingly non-violent) confrontations between blacks and whites. (App. 85-111, 127-128, 131-132, 138-140.) Others did not. The Appellees—who are black—insist that they did not join in the confrontations. (App. 128, 132, 137-139, 149.) Yet they were among the students singled out to be removed from school.

The Appellees' "suspensions" were not identical in every respect. In some cases, a principal thought he had seen them misbehave. In other cases, he relied on the views of other administrators or teachers. (App. 103, 106, 107, 109, 111-112.) Some Appellees were thrown out on the spur of the moment during the school day. (App. 140, 148.) Others were "suspended" only after they, and all other students, had returned home for the day. (App. 128-129, 133.) Some were told what they were alleged to have done. Most were not.

(App. 127, 129, 133, 138, 142, 148-149.) The variations were legion.

But one fact united every case: School officials allowed no Appellee an opportunity, however brief, however informal, to contest allegations that were mistaken and to have their views fairly considered. (App. 129-130, 133, 142, 150.) The record is clear on this point.

Later, the Appellees' parents received short letters informing them of the "suspensions". Some of these letters gave no reason whatever for the "suspensions". Others did. One simply said that the pupil had "disrupted . . . the school program." Another said that the pupil had been "defiant and disrespectful." (App. 48, 53.)

In some cases, the student's parent was asked to come to the school, after the full "suspension" was over, for a conference. But, following usual practice, the conference was not to review the underlying facts of the "suspensions". It was simply to discuss the child's future program. (App. 146-147, 151.) The record reveals *no* instance in which the basis of the "suspension" was ever afterward open to contest—not promptly after the child was sent away, not after the full period of the "suspension", not to this day.

In this manner, the Appellees were deprived of schooling. One of them was kept out of school for one week. (App. 135.) The others were "suspended" for two weeks. One was "suspended" twice, for a total of four weeks. (App. 151.) One, who did not appear with his parents for the later conference, was excluded from school for a longer period—one month. (App. 126,

129-130.) Some were never allowed to return to their school, but were transferred to other schools or night schools. (App. 122, 126, 151.)

The Appellees, then fell victim to the Columbus "suspension" process at an atypical time. But their treatment was entirely typical. They never had a chance to persuade anyone that their "suspensions" were mistaken. Neither did any other Columbus public school pupil, in any circumstances, at this time.

D.

The impact on the Appellees, and their class, of "suspension" from the Columbus public schools was brought out at trial. They were away from school—at home or on the streets—for periods from one week to a month. This was impact enough. The record, however, shows that there were also collateral consequences.

Missing classes for a week, two weeks or a month was academically harmful. The record shows that "suspended" children automatically received "zeros" for every day missed. (App. 147, 153, 165, 184.) But the impact on their grades was only one index. Their learning process was interrupted. (App. 184.) They were often not allowed to take their books away with them. (App. 142.) They were never given a chance to make up the studies that had gone on without them. (App. 123, 136, 143, 152.) The Columbus Director of Pupil Personnel testified that this plainly could have "negative" educational effects. (App. 165-166.)

Those who were eventually transferred to a different school, because of their "suspensions", faced added difficulties. One testified: "I never did catch up fully to what I did miss and the change from one way of

teaching to another made it a little worse than what I had already had." Because of this transfer, he graduated from high school one year later. (App. 125.)

At trial, educational experts and psychologists testified to the emotional harm inflicted by a "suspension"—particularly a "suspension" imposed unilaterally, not giving the student a chance to speak out or understand the basis of his punishment. Being labelled as a "deviant" within the school, they testified, affects the child as a blow to his self-esteem, making him feel "helpless", and often reinforcing or spurring tendencies to misbehave in the future. (App. 155-156, 158-160, 171-176.)

The record also shows a more tangible labelling that resulted from "suspension". The Superintendent of the Columbus Public Schools testified that a child's letter of "suspension" is kept in his permanent file that follows him through the school system. (App. 69.) The file is always open to school personnel. (App. 69.) Thus, as an educational expert testified, "the labelling process . . . does carry over from one teacher to another . . . the teacher expects a certain kind of behavior, namely rebellious behavior or negative behavior, from a youngster and with that kind of expectation as a pre-set the youngster naturally is re-enforced into producing that kind of behavior." (App. 157.)

The child's permanent record, finally, may have other ramifications. It is always available to the police. (App. 79.) And it may be used by teachers writing recommendations to employers or colleges. (App. 69.) Thus the "suspension" label stays with the child in Columbus—well beyond the weeks that he is actually deprived of public schooling.

E.

On the basis of this record, the District Court concluded that the Appellees, and other children "suspended" from the Columbus public schools, from February 1971 to August 1973, were denied Due Process of Law. The Court ordered "that references to the suspensions of plaintiffs or members of their class be removed from all records of the Columbus public schools." [8]

Its holding was limited. It did not declare that every public school must follow one formal procedure in "suspending" children. It recognized room for flexibility in procedure: "The choice of the best procedure for a particular school system should be left to the school officials charged with the administration of that school system." But it denied that procedural discretion is absolute.[9]

Specifically, it held that "suspended" children must be allowed *some* kind of hearing—not a trial-type hearing—"prior to suspension or within a reasonable time thereafter." [10] It noted that immediate removal of a pupil, without a prior hearing, might be essential if the child's conduct is "disrupt[ing] the academic atmosphere of the school, endangers fellow students, teachers or school officials, or damages property." [11] In that case, a later hearing would be appropriate—but "not later than 72 hours after the actual removal of

[8] *Lopez* v. *Williams, supra* note 1, at 1302.

[9] *Id.*

[10] *Id.*

[11] *Id.*

the student from the school." [12] And at the hearing, whether prior or later, the child must, at least, be shown "statements in support of the charges" against him and allowed to offer statements in "defense . . . or in mitigation or explanation of his conduct." [13] The administrator must, then, make a decision based on fair consideration of the opposing statements.

Such a hearing, the District Court said, would simply provide a "minimum" of Due Process. The Columbus public schools did not even provide that.

SUMMARY OF ARGUMENT

This case concerns an administrative process alien to the very concept of Due Process. It is not a summary process. For a hearing is *never* held. Indeed, it is hardly a process at all; it is a system of administrative fiat. It is used to "suspend" children from the public schools.

Once, the operation of the public schools was thought immune from the law and the Constitution. Now, however, the veil has been pierced. It is now known that "suspensions," casual and no doubt arbitrary, are a way of life in the public schools. Over ten years, the lower courts have evolved a body of constitutional law to deal with the problem: they have held that Due Process requires school administrators to allow "suspended" children a hearing. Today, as the issue reaches this Court, the doctrine of procedural due process is sufficiently developed to resolve this case in three clear steps: three steps that inexorably establish

[12] *Id.*

[13] *Id.*

that the school children, here, were denied their right to a fair "suspension" procedure.

First, the Due Process Clause plainly applies to the "suspension" of children from public school. Such action by public school officials is nothing more than ordinary State action; it is directed against "persons" entitled to constitutional protection under the Fourteenth Amendment. It "deprives" them, albeit temporarily, of public schooling, which, in our society, is a basic component of "liberty" and which, in Ohio, is a "property" interest supported by State law and individual school rules.

Second, since the Due Process Clause applies, so does its one most fundamental principle: that no one may be deprived of a protected interest without opportunity for a fair hearing at some time. The public schools of Columbus violated this basic guaranty. This Court has never permitted such a thing. Every procedural due process decision of this Court, therefore, supports a holding that the children of Columbus were denied their right to a fair hearing.

Third, an examination of the realities of school "suspensions"—the risk of arbitrariness, the resulting harm to children, and the interests of school administrators—shows that Due Process is satisfied, in this context, only by opportunity for a fair hearing before "suspension," or, in emergency situations, promptly thereafter.

The holding of the District Court, that the Appellees and their class were "suspended" without Due Process of Law, must be affirmed. Affirmance will not lead this Court down any slippery slope. To the contrary, it will simply establish, once and for all, that school children

may not be *excluded* from public school without at least the minimal fairness that lies at the core of Due Process.

ARGUMENT

I. INTRODUCTION

Some years ago, this lawsuit might never have been filed; if filed, it might have been dismissed out of hand; and, in all likelihood, it would not have any hope to reach the Supreme Court of the United States. Times—and the law—have changed.

Recently, three developments have combined to make the issue raised by this case a pressing one: (1) the problem of school "suspensions" is, at long last, recognized as one of shocking proportions, (2) the lower federal courts have, at last, cut through sterile legalisms surrounding school operations and have evolved a standard for due process in "suspensions", and (3) this Court has sharpened due process doctrine, moving beyond the vague formulae of the past and establishing clearer tests that may now be applied to school "suspensions".

A.

The Problem of School "Suspensions" Is Now Recognized To Be a Problem of Shocking Proportions.

Only a few years ago, school "suspensions" were virtually invisible. The federal government had no idea how many children were "suspended" each year, how they were "suspended", or why. Neither did state governments. Nor local governments. Even school superintendents were often in the dark.[14] For "suspension" was an administrative process so discretion-

[14] The central school authorities of Columbus still are in the dark. *See* page 62 below.

ary and so informal that it was hidden inside the offices of individual principles in indivdual schools throughout America.

An administrative process that operates behind closed doors, beyond the vision of the world, is obviously subject to great abuse.[15] But the abuse remained hidden so long as no one knew how many children it affected. It was assumed, if anyone bothered to think of it, that "suspensions" were confined to a few patently incorrigible troublemakers.

Then, in the fall of 1973, a major effort was undertaken to collect national figures on "suspensions". The Office for Civil Rights of the Department of Health, Education and Welfare (OCR) included questions regarding student "suspensions" in its National School Survey of Public Elementary and Secondary Schools.[16]

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[15] Mr. Justice Frankfurter wrote: "Man being what he is cannot safely be trusted with complete immunity from outward responsibility in depriving others of their rights. . . . Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness." *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 171 (1951) (Frankfurter, J., concurring).

[16] The National School Survey of Public Elementary and Secondary Schools is required under Title VI of the Civil Rights Act of 1964 and under Title IX of the Education Amendments of 1972. Two thousand, nine hundred seventeen school districts were surveyed by OCR in the Fall of 1973. These districts account for over 50 percent of the public school enrollment in the country and over 90 percent of the minority enrollment. All school districts eliminating racially or ethnically dual school systems under terms of voluntary plan agreements with OCR or pursuant to Federal court orders were included in the survey, as well as all districts where the enrollments were comprised of ten percent or more minority students and all districts with at least one school where the enrollment was comprised of 50 percent or more minority students.

Local school districts included in the survey were asked to report, by race and by school, the total number of pupils "suspended" at least once during the 1972-1973 school year.[17] Although OCR has not yet completed its final analysis of the data, preliminary analyses show a nationwide pattern of suspensions from school that is truly astounding.

The Director of the O.C.R., appearing before a House of Representatives Subcommittee in May 1974, summarized the findings for "a few of those cities for which the data is most complete." He testified that, during the 1972-1973 school year, the New York City schools "suspended" 19,518 pupils, the Houston schools "suspended" 9,150 pupils, the Miami schools "suspended" 6,812 pupils, the Cleveland schools "suspended" 11,634 pupils, and the Memphis schools "suspended" 9,339 pupils.[18] And these were only pupils "suspended" at least once; many of them were "suspended" more than once during the single school year.

The O.C.R. Director testified, further, that the data suggests a troubling degree of arbitrariness in the "suspension" process. Specifically, the data shows that minority pupils were "suspended" far more often than other pupils. The New York City schools, for example,

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[17] Each district was required to report, by school, on Form OS/CR 102 "the number of pupils suspended at least once from this school campus during the previous school year" and "the total number of suspension days from this school campus during the previous school year."

[18] Statement by Peter E. Holmes, Director, Office for Civil Rights, Department of Health, Education and Welfare, before Subcommittee on Equal Opportunities, Committee on Education and Labor, U.S. House of Representatives, May 21, 1974, at 11-12.

have a 64.4 percent minority enrollment, but 85.9 percent of all pupils "suspended" were from minority groups. This pattern, the O.C.R. Director testified, was in the data for almost all of the major cities analysed.[19]

A review of O.C.R. data from selected states, conducted by the staff of the Children's Defense Fund,[20] shows that the number of children "suspended" from school is surprising not only in absolute terms, but also in proportion to the total number of children in the schools. In each State studied—Arkansas, Maryland, New Jersey, South Carolina and Ohio—tens of thousands of children were "suspended" in the 1972-1973

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[19] *Id.*

[20] The Children's Defense Fund of the Washington Research Project, Inc., reviewed the suspension data in five States in connection with a study it is conducting of children out of school. Staff members of the Children's Defense Fund were interested in determining the extent to which suspensions were being used as a method of discipline, and the extent to which children were being kept out of school because of suspensions. Because OCR had not completed an analysis of the suspension data, the Children's Defense Fund staff, for four of the five States studied, compiled the suspension figures, referred to in the following paragraphs and set forth in Appendix A, from the school-by-school data (Form OS/CR 102) submitted by the districts surveyed by OCR. The suspension data for the South Carolina districts were taken from a chart published by the South Carolina Community Relations Program of the American Friends Service Committee in "Do Unto Others . . . A Report on School Districts' Compliance With South Carolina's 1973 'Student Discipline Law'" *Your Schools*, Special Report, April 1974, pp. 14-16. The figures in that chart were compiled from Form OS/CR 101. The source documents for the suspension data are available at the Office for Civil Rights in the Department of Health, Education and Welfare, 330 Independence Avenue, S.W., Washington, D. C.

school year.[21] Specifically, more than one of every twenty pupils in the schools were "suspended".[22]

But the problem is even more acute. When the focus is turned to junior and senior high schools, the numbers of children "suspended" are amazing. In these schools, "suspensions" were a way of life: about one of every ten secondary school students was "suspended" during the 1972-1973 school year. Minority students, again, were thrown out even more frequently: about one of every seven minority students in secondary school was "suspended".[23]

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[21] The districts in the five States reported "suspending" over 150,000 children in all. The total number "suspended" would far exceed 150,000, if all of the school districts in the five States had been included by OCR in its Fall 1973 Survey. The number of suspensions would also be increased if all of the school districts surveyed had submitted data on suspensions to OCR. Suspension data were available for 397 of the 402 districts surveyed by OCR in the fall of 1973. The largest school district reporting information "not available" on suspensions was Columbus, Ohio.

The 402 districts surveyed by OCR were less that 25 percent of the total number of operating school districts in the five States studied, but they accounted for over 50 percent of the total public school enrollment in these five States. District-by-district breakdowns of the suspension data reported to OCR by each of the districts surveyed are set forth in Tables I-V of Appendix A.

[22] Again, these students were "suspended" *at least* once. In four of the five States studied, students missed over 575,000 school days—the equivalent of 3,200 school years—due to "suspension." (No data on "suspension" days were recorded by the Children's Defense Fund for the school districts in South Carolina.)

[23] Because breakdowns on secondary suspensions were not readily available from OCR, the Children's Defense Fund looked at suspensions from secondary schools in only ten selected districts in the five States studied. However, its review of suspension figures in a number of school districts in other States, which have been examined in connection with its study of children out of school, support these findings.

Indeed, this O.C.R. data actually understates the dimensions of the problem. It identifies children who were "suspended" at least once during the 1972-1973 school year, but gives no indication of the frequency with which individual students were suspended. As part of its nationwide survey of children out of school, the Children's Defense Fund tried to find out more about the "suspended" student. Its staff visited more than 8,000 households in urban census tracts and parts of rural counties.[24] It found that of all the school-age children in these households "suspended" at least once during the 1972-1973 school year, 61% were "suspended" only once. But 39% were "suspended" more than one time during the single year. In fact, 25% were "suspended" three or more times.[25]

Thus, at long last, it is clear that the "suspension" problem really *is* a problem. It is more than that: "Suspension" of children from public school is now a virtual epidemic in America.

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[24] The 8,000 households surveyed were in nine states and the District of Columbia—specifically, parts of Autauga County and Montgomery, Alabama; Denver, Colorado, Hancock County and Macon, Georgia; Davenport, Iowa; Floyd County, Kentucky; Portland, Maine; Cambridge, Holyoke, New Bedford, Somerville and Springfield, Massachusetts; Canton, Mississippi; Columbia and Sumter County, South Carolina; and Washington, D. C. The surveyed areas considered together represent a wide socioeconomic cross-section. Interviewing in these areas took place between July 1973 and March 1974.

[25] A more detailed analysis of the findings of the Children's Defense Fund survey is set forth in Appendix B of this brief.

B.

Dealing With Isolated Cases of "Suspension", the Lower Federal Courts Have Cut Through the Legalisms That Once Shrouded School Operations and Have Developed a Right of Due Process for the "Suspended" Child.

Over the years, "suspensions" have produced many lawsuits in the courts. These lawsuits have revealed what is going on in the public schools: the utter lack of procedural regularity that permits, even encourages, easy and unjustified resort to the sanction of "suspention". But, for years, the courts could not open their eyes to these facts.

Their vision was blocked by a fog of legal doctrine that shrouded the decisions of school administrators to throw out their students. "To support their position, the administrators could draw on a whole grab-bag of conceptualisms: that attendance . . . was a privilege rather than a right; that . . . [the school] stood *in loco parentis* to the student; or that the vague rules . . . that a student could be dismissed whenever the institution thought this advisable, constituted a contract that the student had accepted." Wright, *The Constitution on Campus*, 22 VAND. L. REV. 1027, 1030 (1969). The power of the administrators was absolute, their abuse of it unreviewable. Few questioned this legal orthodoxy.

One who did, Professor Warren Seavey, wrote in 1957: "[O]ur sense of justice should be outraged by denial to students of the normal safeguards. It is shocking that the officials of a state educational institution, which can function properly only if our freedoms are preserved, should not understand the elementary principles of fair play. It is equally shocking to find that a court supports them in denying to a

student the protection given to a pickpocket." Seavey, *Dismissal of Students: "Due Process"*, 70 HARV. L. REV. 1406, 1406-1407 (1957). Yet that is what courts did.

At last, in 1961, a court cut through the legalisms shrouding public school operations for the first time. The case involved the "expulsion" of a student from a state college. The court held that "due process requires notice and some opportunity for hearing before a student . . . is expelled for misconduct." *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150, 158 (5th Cir. 1961), *cert. denied*, 368 U.S. 930. The court reasoned that a hearing was required because "a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witnesses." *Id.* at 158-159. It held that the hearing (a) must be before the dismissal, and (b) must involve "the rudiments of an adversary proceeding." *Id.*

At first, other courts were slow to generalize the *Dixon* holding, as they clung to the idea that they "should not usurp" the role of school administrators. *E.g., Madera* v. *Board of Education*, 386 F.2d 778, 784 (2nd Cir. 1967). But, haltingly, *Dixon* was applied to "expulsion" from a public high school, *e.g., Wasson* v. *Trowbridge*, 382 F.2d 807 (2nd Cir. 1967), and then to "suspension" from a state college, *e.g., Esteban* v. *Central Missouri State College*, 277 F.Supp. 649 (W.D. Mo. 1967), and then to "suspension" from a public high school, *e.g., Williams* v. *Dade County School Board*, 441 F.2d 299 (5th Cir. 1971). Ten years after the *Dixon* decision, it was being applied regularly to "suspensions" from public schools.

In the early 1970's, the courts began to apply *Dixon* to "suspensions" of varying severity. Once again, they felt their way slowly, carefully. At first, they required a *prior* hearing for a "suspension" of 40 days, *Williams* v. *Dade County School Board, supra*, and then for a "suspension" of 10 days, *Black Students of North Fort Myers Jr.-Sr. High School* v. *Williams*, 470 F.2d 957 (5th Cir. 1972), but not for a "suspension" of 5 days, *Jackson* v. *Hepinstall*, 328 F.Supp. 1104, 1106 (N.D.N.Y. 1971), or of 3 days, *Tate* v. *Board of Education*, 453 F.2d 975 (8th Cir. 1972). And yet they seemed to assume that *some* kind of hearing should be held even in cases of shorter "suspensions". *E.g., Banks* v. *Board of Public Instruction*, 314 F.Supp. 285, 292 (S.D.Fla. 1970).

Next, the courts recognized that even a "suspension" of a few days could work substantial harm to a child. *E.g., Shanley* v. *Northeast Ind. School District*, 462 F.2d 960 (5th Cir. 1972). One court required a formal, prior hearing for a "suspension" of two days. *Mills* v. *Board of Education*, 384 F.Supp. 866, 878 (D.D.C. 1972). And another observed that "a suspension of even one hour could be quite critical to an individual student if that hour encompassed a final examination that provided for no 'make-up'." *Shanley* v. *Northeast Ind. School District, supra*, at 967 n.4.

Finally, in the last two years, the courts have reached the middle-ground solution that they appeared to have been searching for. They have concluded that a "suspension" of 5 days, *Vail* v. *Board of Education*, 354 F.Supp. 592, 603-604 (D.N.H. 1973), or 10 days, *Black Students of North Fort Myers Jr.-Sr. High School* v. *Williams, supra*, must be preceded by an adversary hearing of the kind contemplated in *Dixon*. For

shorter "suspensions" "full compliance with the requisites outlined in *Dixon* is not required." *Pervis* v. *LaMarque Ind. School District,* 466 F.2d 1054, 1058 (5th Cir. 1972). But "due process requires at least an *informal* administrative consultation with a student before *any* suspension is imposed so that the student can know why he is being disciplined and so that the student can have the opportunity to persuade the school official that the suspension is not justified." *Vail* v. *Board of Education, supra,* at 603.

Thus the law of "suspension" from public school has developed dramatically—although gradually—in the past years. The legal spade work has been done; a vast variety of cases have yielded a coherent doctrine. The time is ripe for decision by this Court.

C.

The Principles of Procedural Due Process Have Now Been Sharply Defined by This Court and May Now Be Applied to the Problem of School "Suspensions".

For years, the law of procedural due process was vague and opaque. "Many controversies," Mr. Justice Jackson said, "have raged about the cryptic and abstract words of the Due Process Clause." *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306, 313 (1950). The controversies were due, largely, to the very fact that the Clause was interpreted to be "cryptic and abstract".

So long as due process called only for a vague, unsystematic "weighing" of a shifting multitude of factors, it could be made to allow whatever a judge wanted it to allow. *See Goldberg* v. *Kelly,* 397 U.S. 254, 255-257 (1970) (Black, J., dissenting); *In re Winship,* 397 U.S. 358, 377 (1970) (Black, J., dissenting). Any one factor could be picked out, emphasized, and given the weight that the desired result required. A relatively novel issue—like school "suspensions"—would be resolved *ad hoc.* Because it would *seem* novel, a judge might start with an intuitive "feeling" that he should not intervene *via* the Due Process Clause. That might have ended the case. For the Clause required no standard any more precise than that very "feeling" of the judge.

Now, that has changed. The Supreme Court in the last twenty years has built "law" into the Due Process of Law. Most notable, of course, was the "incorporation" of Bill of Rights provisions into the Fourteenth Amendment Due Process Clause. *E.g., Gideon* v. *Wainwright,* 372 U.S. 335 (1963). But just as important, if somewhat slower in coming, was the successful effort led initially by Mr. Justice Harlan to construct a stable, independent doctrine of procedural due process. *E.g., Boddie* v. *Connecticut,* 401 U.S. 371 (1971); *Sniadach* v. *Family Finance Corporation,* 395 U.S. 337, 342 (1969) (Harlan, J., concurring); *Fuentes* v. *Shevin,* 407 U.S. 67 (1972); *Board of Regents* v. *Roth,* 408 U.S. 564 (1972); *Arnett* v. *Kennedy,* 42 U.S.L.W. 4513, 4532 (1974) (White, J., concurring and dissenting); *Mitchell* v. *W. T. Grant Co.,* 42 U.S.L.W. 4671 (1974); *Astol Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 42 U.S.L.W. 4693 (1974).

Now, an intuitive "feeling" is only the beginning, not the end, of a case. Application of the Due Process Clause still depends on a variety of factors. But those factors are ordered systematically; and they are limited systematically. In some cases, the factors must still be weighed. But they must be weighed system-

atically. A novel issue, such as school "suspensions", is no longer presented in a doctrinal vacuum. There is stable doctrine that must be applied to the issue.

Analysis of a procedural due process issue now requires three distinct steps. (1) It no longer begins with a proclamation that the Due Process Clause is "cryptic and abstract". Instead, the analysis now begins by considering whether a "person" has been "deprived" of an interest in "life, liberty or property". *E.g., Fuentes* v. *Shevin, supra,* at 84-90; *Morrissey* v. *Brewer,* 408 U.S. 471, 481 (1972); *Board of Regents* v. *Roth, supra,* at 569-578; *Perry* v. *Sindermann,* 408 U.S. 597, 599-604 (1972); *Arnett* v. *Kennedy, supra,* at 4530-4531 (Powell, J., concurring), 4534-4536 (White, J., concurring and dissenting), 4522-4524 (Marshall, J., dissenting). If a case falls within these terms of the Due Process Clause, then the right to procedural due process must be granted.

To determine what that right is, the analysis takes two more steps. (2) Initially, one basic principle must be applied: A person deprived of "life, liberty or property" must be allowed *some* opportunity at *some* time to challenge the basis of the deprivation. *E.g., Boddie* v. *Connecticut, supra,* at 377-378; *Fuentes* v. *Shevin, supra,* at 80-81; *Board of Regents* v. *Roth, supra,* at 569-571; *Arnett* v. *Kennedy, supra,* at 4530 (Powell, J., concurring), 4534 (White, J., concurring and dissenting), 4523 (Marshall, J., dissenting). This opportunity to be heard must be "meaningful", both fair and adequate to bring out the facts that might persuade those in authority to countermand the deprivation. *E.g., Armstrong* v. *Manzo,* 380 U.S. 545, 552 (1965); *Goldberg* v. *Kelly, supra,* at 266-271; *Morrissey* v. *Brewer, supra,* at 484-489; *Arnett* v. *Kennedy, supra,* at 4539-4541 (White, J., concurring and dissenting).

(3) Finally, to determine the timing and form of the hearing required by Due Process, a court must canvass three factors: (a) What is the risk of a mistaken deprivation of "life, liberty or property" under present circumstances? (b) What harm is done to a person by a mistaken deprivation? (c) What effect would requirement of a fair hearing, before the deprivation, have on the governmental program at issue. To what extent would it frustrate the program? To what extent would it promote the goals of the program? Based on this survey, a court can decide what kind of hearing opportunity is required and whether it must be before or after the initial deprivation. *See e.g., Goldberg* v. *Kelly, supra,* at 263-271; *Boddie* v. *Connecticut, supra,* at 378; *Fuentes* v. *Shevin, supra,* at 80-82; *Morrissey* v. *Brewer, supra,* at 477-490; *Board of Regents* v. *Roth, supra,* at 569-570; *Arnett* v. *Kennedy, supra,* at 4531-4532 (Powell, J., concurring), 4536-4541 (White, J., concurring and dissenting), 4524-4528 (Marshall, J., dissenting); *Mitchell* v. *W. T. Grant Co., supra; Astol Calero-Toledo* v. *Pearson Yacht Leasing Co., supra.*

There *is* a doctrine of procedural due process. This case, then, is not a "school case". Rather, it is a procedural due process case. And, when the law of procedural due process is applied, this becomes not a hard case, but an easy one.

II. THE DUE PROCESS CLAUSE APPLIES

The elementary issue is whether the "suspension" of children from public school falls within the terms of the Due Process Clause: whether the children are entitled to any due process protection at all. It is the

most hotly contested issue in the case. It cuts to the heart of the court decisions, since 1961, that have protected a child's interest in schooling with the due process guaranty. The question is whether the fog of conceptualisms that once shrouded the public schools should be permitted to descend once again.

A.

Public School Action Is Ordinary "State Action".

The Fourteenth Amendment applies to State action. The public schools are run by the State. But, at one time, it was thought that school administrators were somewhat special, not just State agents, but quasi-parents. If they were subject to the Constitution at all in dealing with pupils, it was thought to be a wholly permissive Constitution. See Wright, *The Constitution on Campus,* 22 VAND. L. REV. 1027, 1030 (1969); Buss, *Procedural Due Process for School Discipline,* 119 U. PA. L. REV. 547, 559-562 (1971). This old doctrine, however, is now too transparent to mask the obvious reality, too feeble to bar the Due Process Clause, with its full force, from the public schools.

Clearly, public school administrators *are* State Agents. They act for the government, they are employed by the government, and they are subject to government control. They are *not* parents. With the enactment of compulsory education laws, "to suggest that the parent delegates unrestricted power [to school administrators] especially when he objects to the discipline imposed, is patently absurd." Buss, *Procedural Due Process for School Discipline, supra,* at 560. *See* pages 78-79 below.

Time and again, the Court has recognized that public school officials are not parents for the purposes of the

Constitution. It has recognized that the interests of the public schools and of parents may conflict fundamentally. *E.g., Meyer* v. *Nebraska,* 262 U.S. 390 (1923); *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925). And it has applied the Constitution to limit the actions of public school administrators. *E.g., West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624 (1943); *Engel* v. *Vitale,* 370 U.S. 421 (1962).

The Court has not stopped at applying the Constitution to formal regulations of School Boards, but has also applied it, with full force, to discretionary actions of public school principals. Indeed, it has applied the Fourteenth Amendment to disciplinary action by principals—specifically to "suspension" of students. *Tinker* v. *Des Moines Indep. Community School District,* 393 U.S. 503 (1969).

Thus, if anything is sure, it is sure that public school action is ordinary "State action". No fiction alone can keep the Fourteenth Amendment out of the public schools of Columbus.

B.

Children Are Full-Fledged "Persons".

The Fourteenth Amendment protects "persons". It seems obvious that children are "persons". But an age-old tradition was to the contrary. It was long believed that, "like the imbecile, the crazed and the beasts, over . . . children . . . there is no law." [26] This antique philosophy may animate the actions of many public schools. It is however, obnoxious to the Constitution.

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[26] T. Hobbes, LEVIATHAN 257 (Molesworth ed., Vol. 3, 1839-1845).

This Court has spoken in no uncertain terms: "[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone." *In re Gault,* 387 U.S. 1, 13 (1967). The Court has specifically affirmed the right of children to Due Process of Law under the Fourteenth Amendment. *E.g., Haley* v. *Ohio,* 332 U.S. 596 (1948); *Gallegos* v. *Colorado,* 370 U.S. 49 (1962); *In re Gault, supra; In re Winship,* 397 U.S. 358 (1970); *McKeiver* v. *Pennsylvania,* 403 U.S. 528 (1971). Thus it is too late in the day to read children out of the Due Process Clause.

To be sure, the past decisions recognizing the due process rights of children have arisen in a criminal context, *Haley* v. *Ohio, supra; Gallegos* v. *Colorado, supra,* or a quasi-criminal context, *In re Gault, supra; In re Winship, supra; McKeiver* v. *Pennsylvania, supra.* The present case arises in the context of the public schools. But that makes no initial difference.

The context in which a child asserts due process rights may affect the *nature* of the due process he deserves. *McKeiver* v. *Pennsylvania, supra.* But it cannot affect his right to invoke the Due Process Clause at all. It cannot affect his constitutional status as a "person".

The Court has held that a child's right to free expression, under the First and Fourteenth Amendments, does not disappear in the context of the public schools. *Tinker* v. *Des Moines Indep. Community School District,* 393 U.S. 503 (1969). How, then, could his right to due process disappear? If a child in school is a "person" for purposes of the First and Fourteenth

Amendments,[27] then he is a "person" for purposes of the Fourteenth Amendment alone.

The sole fact that he is a child, moreover, cannot water down the due process to which he is entitled. For the evil addressed by the Due Process Clause threatens him as much as an adult. A child is no more immune to deprivation of liberty or property than an adult. Indeed, he is more vulnerable to such deprivation. He may, in fact, have less liberty. He may have less property. But what he has can be taken away. And it often is. *See Tinker* v. *Des Moines Indep. Community School District, supra.* To protect what he has, he asks to be heard.

The right to be heard is just as important to a child as to an adult. Sometimes, it is suggested that a child's First Amendment rights may be more limited than those of an adult, simply on grounds of age and maturity. *See Ginsberg* v. *New York,* 390 U.S. 629, 639 (1968). Some may think that a child lacks experience needed to participate in the general marketplace of ideas. The Court in *Tinker* rejected this notion. 393 U.S. at 505-507. But, whatever a child's competence to participate in this general marketplace, he surely is competent to speak and be heard in regard to facts about his own conduct, facts which will determine whether he is deprived of liberty or property. He may not know much about the war in Vietnam. But he knows what he did

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[27] "Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State." *Tinker* v. *Des Moines Indep. Community School District, supra,* at 511.

a few hours ago. His interest in the war may be less than that of an adult. But his interest in protecting what is his is the same as that of any other "person".

C.

The Children in Columbus Were "Deprived" of Schooling.

The Due Process Clause applies to "deprivations". The Columbus school children surely were "deprived" of schooling. They were thrown out of school. They were not allowed to attend their classes. They were not allowed to enter their school building. They were not allowed even to get their books. What they had—the opportunity to go to school—was taken away.

To be sure, it was not taken away totally, forever. Some were thrown out of all Columbus day schools forever, but were permitted to go to night school after their "suspension". Some were thrown out of their former school forever, but were permitted to go to another school afterwards. Some were even permitted to return to their former school after the "suspension". *See* pages 13-14 above. They all, however, had a period of up to two weeks of "suspension" in which their opportunity to attend *any* school was taken away completely.

The temporary nature of the "suspension" does not make it any the less a "deprivation" for the purposes of the Due Process Clause. The Court has held that temporary garnishment of wages and temporary replevin of possessions are "deprivations" subject to procedural due process. *Sniadach* v. *Family Finance Corp.*, 395 U.S. 377 (1969); *Fuentes* v. *Shevin*, 407 U.S. 83 (1972). Similarly, it has held that temporary "suspension" of a driver's license is, constitutionally,

a "deprivation". *Bell* v. *Burson*, 402 U.S. 535 (1971). Last Term, the Court simply took it for granted that temporary "sequestration" of possessions is a "deprivation" requiring due process protection. *Mitchell* v. *W. T. Grant Co.*, 42 U.S.L.W. 4671 (1974). "[I]t is now well settled that a temporary, nonfinal deprivation . . . is nonetheless a 'deprivation' in terms of the Fourteenth Amendment." *Fuentes* v. *Shevin*, *supra*, at 85.

The "deprivation" in the present case is even clearer than in the Court's past decisions. First, the time period of the "deprivation" was longer. The Appellees, with one exception, were thrown out of school for at least a full two weeks. But, in the past decisions, the deprivations could last as little as a few days. *Sniadach* v. *Family Finance Corp.*, *supra*, at 343 (Harlan, J., concurring); *Bell* v. *Burson*, *supra*, at 536; *Fuentes* v. *Shevin*, *supra*, at 85; *Mitchell* v. *W. T. Grant Co.*, *supra*, at 4673. The Court had no trouble with this fact. "The Fourteenth Amendment", it said, "draws no bright lines around three-day, or 10-day or 50-day deprivations . . . ." *Fuentes* v. *Shevin*, *supra*, at 85.

Second, the temporary "deprivation" here was more permanent and more total, within its time bounds, than those in past decisions. In the past cases, a person had the opportunity at any time to regain what had been taken from him by posting a bond. *Sniadach* v. *Family Finance Corp.*, *supra*, at 343 (Harlan, J., concurring); *Bell* v. *Burson*, *supra*, at 536; *Fuentes* v. *Shevin*, *supra*, at 85; *Mitchell* v. *W. T. Grant Co.*, *supra*, at 4673. The children in Columbus had no such option to undo a "suspension". Moreover, in the past cases, a person

was compensated later for his temporary loss if it turned out to have been mistaken. *Fuentes* v. *Shevin, supra,* at 73 n.6; *Mitchell* v. *W. T. Grant Co., supra,* at 4676. The children in Columbus could look forward to no such compensation. Whether or not their "suspension" was mistaken, they were not allowed to make up the work they missed and were inevitably given "zeros" for their days out of school.

Third, the temporary "deprivation" here worked other potential "deprivations" beyond the actual period out of school. *See* pages 14-15 above. In the past cases, there was no suggestion that the loss of possessions for a few days would, in itself, do any harm in the future. *Fuentes* v. *Shevin, supra; Mitchell* v. *W. T. Grant Co., supra.* But, here, the record shows that denial of schooling for two weeks may deny a child educational advancement or job opportunities later on.

Thus, if it were not already obvious that the Columbus school children suffered a "deprivation" for purposes of the Due Process Clause, this Court's past decisions make it a foregone conclusion.

D.

The Children in Columbus Were Deprived of an Interest in "Liberty" and "Property".

The Due Process Clause applies only to certain deprivations: deprivations of "life, liberty or property". The school children obviously were not deprived of their lives. But they were deprived of the opportunity to go to public school. This basic opportunity, quite clearly, is an aspect of the "liberty" and "property" protected by the Fourteenth Amendment.

Years ago, in 1961, when the courts first held that deprivation of public education was subject to due process safeguards, the distinction between "rights" and "privileges" was still thought to limit application of the Fourteenth Amendment. The *Dixon* court rejected this distinction, holding that lack of a constitutional "right" to public education was irrelevant to a student's right to due process. *Dixon* v. *Alabama State Board of Education,* 294 F.2d 150, 156 (5th Cir. 1961). This was a great breakthrough at the time. Since then, however, "the Court has fully and finally rejected the wooden distinction between 'rights' and 'privileges' that once seemed to govern the applicability of procedural due process rights." *Board of Regents* v. *Roth,* 408 U.S. 564, 571 (1972). That conceptualistic baffle to due process rights for students is now buried. Strangely, the Appellants in this case seek to resurrect it, with their insistence that public education is not a "fundamental" constitutional right. Brief of Appellants, at 8-16. They seek to apply the law of twenty years ago. One need only say: They are too late.

In place of "right"-"privilege" analysis, the *Dixon* court, thirteen years ago, held that public education is protected by the Due Process Clause because it is "vital and, indeed, basic to civilized society." 294 F.2d at 157. Until recently, other courts followed *Dixon* in this emphasis on the *importance* of a deprivation as the index of its constitutional protection. *See* cases cited on pages 26-28 above. This analysis has led them to worry interminably about distinguishing "important" or "substantial" school "suspensions" from "unimportant" or "insubstantial" ones. But, now, this approach—like that of "right" and "privilege"—has become obsolete.

Weighing the "importance" of an interest "has long been a part of any determination of the *form* of hearing required in particular situations by procedural due process. But, to determine whether due process requirements apply in the first place, we must look not to the 'weight' but to the *nature* of the interest at stake." *Board of Regents* v. *Roth, supra,* at 570-571. *See Fuentes* v. *Shevin,* 407 U.S. 67, 88-90 (1972); *Morrissey* v. *Brewer,* 408 U.S. 471, 481 (1972); *Arnett* v. *Kennedy,* 42 U.S.L.W. 4513, 4530-4531 (Powell, J., concurring), 4534-4536 (White, J., concurring and dissenting), 4522-4524 (Marshall, J., dissenting). Thus, to determine whether the deprivaton of public schooling is subject to procedural due process, the test is "whether the nature of the interest is one within the contemplation of the 'liberty or property' language of the Fourteenth Amendment." *Morrissey* v. *Brewer, supra,* at 481.

(1) *"Liberty".* The interests in "liberty" protected by the Due Process Clause are inherently vaguer, more difficult of description, than the "property" interests. This is inevitable. "In a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed." *Board of Regents* v. *Roth, supra,* at 572. When the Court has sought to give examples of protected "liberty" interests, it made clear that more than "freedom from bodily restraint" is involved and it has mentioned, *inter alia,* the opportunity of an individual "to acquire useful knowledge, to marry, establish a home and bring up children." *Meyer* v. *Nebraska,* 262 U.S. 390, 399 (1923); *Board of Regents* v. *Roth, supra,* at 572. The opportunity to attend public school must be near the center of this circle of this circle of protected "liberty" interests.

Indeed, that opportunity corresponds to two of the examples of "liberty" interests the Court has already mentioned. For children, public schooling is *the* way "to acquire useful knowledge." For parents, public schooling is essential to "bring up [their] children." One needs little imagination to show that public education—the opportunity that determines all later opportunities—must be one "liberty" protected from arbitrary encroachment by a "Constitution for a free people." A people deprived of education might not long be a free people.

Imagination, however, is not required to reach this conclusion. One can rely on the prior *holdings* of the Court. For the Court has held that the opportunity to learn foreign languages in public school is a protected "liberty" under the Fourteenth Amendment. *Meyer* v. *Nebraska, supra.* If the interest in learning one subject in public school is protected, then so must be the interest in learning *all* subjects. The Court has also held that the opportunity to attend private school is a protected "liberty". *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925). Why not, then, the opportunity to attend public school?

To be sure, the two past decisions involved total deprivation of the "liberties" at stake. The deprivation here is temporary. But, since it is the *nature* of the interest rather than its weight that determines whether the Due Process Clause applies, this distinction makes no difference.

Due Process, no doubt, would require more formal protection against a total deprivation of the "liberty" of public schooling. But it requires *some* protection against temporary deprivations. Liberty would be frail

indeed if it were secure against destruction *in toto,* but could be taken away arbitrarily, piece by piece.

Naturally, the "liberty" covered by the Due Process Clause has limits. It does not include the interest in holding a particular job with a particular employer. *Board of Regents* v. *Roth, supra; Perry* v. *Sindermann,* 408 U.S. 593 (1972); *See Cafeteria & Restaurant Workers* v. *McElroy,* 367 U.S. 886 (1961). On the other hand, it does include the interests in finding some job. *Board of Regents* v. *Roth, supra,* at 573-574; *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 185 (1951) (Jackson, J., concurring). And "liberty" would be infringed if a person were dismissed from a particular job on the basis of a "charge against him that might seriously damage his standing and associations in the community." *Board of Regents* v. *Roth, supra,* at 573; *see Wieman* v. *Updegraff,* 344 U.S. 183, 191 (1952).

Similarly, in this case, the children's "liberty" might not have been infringed if they had been temporarily moved out of one particular school into another equivalent one. But that is not what happened. They were excluded from *all* schools. And they were excluded on the basis of a charge of misconduct that, the record shows, might well seriously damage their standing and associations with future teachers and fellow pupils. *See* page 15 above. Thus it is clear: the children were deprived of an interest in "liberty" protected by the Due Process Clause.

(2) *"Property".* "To have a property interest in a benefit, a person . . . must . . . have a legitimate claim of entitlement to it." *Board of Regents* v. *Roth, supra,* at 577. This claim is not created by the Constitution.

Rather, it must arise under "existing rules or understandings that stem from an independent source." *Id.* The source may be a statute setting conditions for entitlement to a benefit, *e.g., Goldberg* v. *Kelly,* 397 U.S. 254 (1970), or conditions for continued entitlement to a job, *Arnett* v. *Kennedy,* 42 U.S.L.W. 4513, 4530 (Powell, J., concurring), 4534-4536 (White, J., concurring and dissenting), 4522-4524 (Marshall, J., dissenting). The source of the 'property" interest may also be a written contract, *Wieman* v. *Updegraff, supra,* or an institutional "guideline", *Perry* v. *Sindermann, supra,* at 599-600, or an unwritten but "mutually explicit" and binding "understanding", *id.* at 600-601. The test is whether there is *some* independent source on which a person may legitimately rely to show that he is *entitled* to a benefit. In this case, the school children could legitimately rely on two such sources to show their entitlement to continued public schooling.

First, they could rely on State statutory law. The Ohio Revised Code obliges local governments to provide a "free education" to all "residents between six and twenty-one years of age." Ohio Rev. Code §§ 3313.48, 3313.64. A duty creates a correlative right. Ohio localities have a duty to provide schooling to children between six and twenty-one years old. Therefore, such children have a right to public schooling. They need make two showings—that they are "residents" of a locality and that they are of the specified age—and they can then establish their statutory entitlement to go to school.

The statutory entitlement to a public education is reinforced by a Code provision that obliges parents to "cause" their children of school age "to attend a

school." Ohio Rev. Code § 3321.03. The only exception is for a child who has "been determined to be incapable of profiting substantially by further instruction." *Id.* The Ohio courts have made clear that "the purpose of . . . this statute regarding compulsory school attendance" is to benefit the child. *State* v. *Gans,* 151 N.E.2d 709, 714 (1958). The goal is to enable the child to realize "his own potential", for without education he "can hardly be expected to realize his potential either to himself or to his community, regardless of his basic natural intelligence." *Id.* at 713-714. Once again, therefore, the statutory duty supports a correlative claim of entitlement to schooling.

Significantly, the Ohio compulsory attendance law seeks to guarantee the child's education "for the full time the school attended is in session, which shall not be for less than thirty-two weeks per school year." Ohio Rev. Code § 3321.04. Thus the child's entitlement is not just to *some* public schooling. It is to public schooling for thirty-two weeks a year. The children in this case were deprived of that schooling for two weeks of the year.

Of course, it is true that Ohio law permits school principals to "suspend" pupils for up to two weeks and does not limit the permissible grounds for "suspension". Ohio Rev. Code § 3313.66. This statutory provision, however, does not dissolve the child's entitlement to schooling. The entitlement is not so easily overcome. And, in any event, the statutory law is only the first source of the entitlement.

Second, in the context of "suspension", a child may also base his claim on the rules of his particular school. The record shows that each public school in Columbus

did adopt rules that stated the types of misconduct for which a pupil might be thrown out of school. *See* page 9 above. These rules limited the discretion of principals. They provided a basis for a legitimate claim that a child had been wrongfully "suspended"—if he violated no rule—and, therefore, that he was entitled to remain in school.

The school rules, at the very least, have the force of the "guidelines" on which a teacher based his claim of job entitlement in *Perry* v. *Sindermann, supra,* at 600. The Court in *Perry* noted that:

> "the respondent claimed legitimate reliance upon guidelines promulgated by the Coordinating Board of the Texas College and University System that provided that a person, like himself, who had been employed as a teacher in the state college and university system for seven years or more has some form of job tenure. Thus, the respondent offered to prove that a teacher with his long period of service at this particular State College had no less a 'property' interest in continued employment than a formally tenured teacher at other colleges, and had no less a procedural due process right to a statement of reasons and a hearing before college officials upon their decision not to retain him."

408 U.S. at 600-601. The Court made clear that " 'property' interests subject to procedural due process protection are not limited by a few rigid, technical forms." *Id.* at 601. Earlier, the Court had noted that "property" interests are created by sources *"such as* State law." *Board of Regents* v. *Roth, supra,* at 577 (emphasis added). Explicit State law, therefore, is one, but only one, possible source of protected "property" interests. If the "guidelines" in *Perry* were

another possible source, then so were the school rules in this case.

The rules may have been vague. But they could not have been more vague than the "sufficient cause" standard held by a majority of the Court, last Term, to create a "property" interest in federal employment. *Arnett* v. *Kennedy, supra,* at 4530 (Powell, J., concurring), 4534-4536 (White, J., concurring and dissenting), 4522-4524 (Marshall, J., dissenting). If a statute "guaranteeing . . . continued employment absent 'cause' for discharge conferred . . . a legitimate claim of entitlement which constituted a 'property' interest," *id.* at 4530 (Powell, J., concurring), then so did the Ohio statutes guaranteeing a child thirty-two weeks of public schooling and the school rules specifying the misconduct that could lead to "suspension".

* * * * * * * * *

Exclusion from public school, therefore, constitutes a "deprivation" of both "liberty" and "property". The lower courts, since 1961, have assumed as much. The law they have evolved—for both "expulsions" and "suspensions"—rests on this assumption. It is now time to make it official, so that the Due Process Clause will not again be totally barred from the public schools.

III. THE BASIC PRINCIPLE OF DUE PROCESS ESTABLISHES THAT THE COLUMBUS "SUSPENSION" PROCEDURE WAS UNCONSTITUTIONAL: THE CHILDREN WERE DENIED THE RIGHT TO BE HEARD

It being settled that the Due Process Clause applies in this case, the remaining question is: Were the "suspended" children in Columbus given the due process the Constitution demands?

To be sure, the answer to this question may require a "weighing" of particular factors involved in school "suspension". *See* pages 54-81 below. But, first, it requires application of the most basic principle of Due Process, a principle that applies in any case and defines the nature of the constitutional guaranty: A person deprived of life, liberty or property must, sometime, have an opportunity to be heard.

"The principles of due process 'come to us from the law of England . . . and their requirement was there designed to secure the subject against the arbitrary action of the crown and place him under the protection of the law.' *Dent* v. *West Virginia,* 129 U.S. 114, 123 (1889)." *Arnett* v. *Kennedy,* 42 U.S.L.W. 4513, 4534 (1974) (White, J., concurring and dissenting). Thus the purpose of Due Process is to secure life, liberty and property against arbitrary deprivation. It is "not only to ensure abstract fair play to the individual. Its purpose, more particularly, is . . . to minimize substantively unfair or mistaken deprivations . . . ." *Fuentes* v. *Shevin,* 407 U.S. 67, 80-81 (1972).

To serve that purpose, Due Process imposes a simple, but absolutely essential, requirement: "The past cases of this Court *uniformly* indicate that *some* kind of hearing is required at *some* time . . . ." *Arnett* v. *Kennedy, supra,* at 4534 (White, J., concurring and dissenting) (emphasis added). The "opportunity to be heard" has been at the core of procedural due process from the beginning. *See Baldwin* v. *Hale,* 1 Wall. 223, 233 (1863); *Windsor* v. *McVeigh,* 93 U.S. 274 (1876); *Grannis* v. *Ordean,* 234 U.S. 385 (1914). It has always been held crucial to preventing arbitrary or mistaken deprivations. There is no substitute, because "no better instru-

ment has been devised for arriving at truth than to give a person . . . notice of the case against him and opportunity to meet it." *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring).

The Columbus "suspension" process collided even with this most basic requirement. The Appellees, the record shows, were not allowed *any* opportunity at *any* time "to be heard." The word of teachers and administrators was the last word. The child had no chance to show that they were mistaken about his conduct or that there were mitigating circumstances. Even after the suspension was over, there was no opportunity to contest its validity.

It was a process that rested on one-sided determination of facts. One view of the facts went unchallenged and untested; the other went unheard. The risk of unfair or mistaken "suspensions", therefore, could not help but be great. "[F]airness [and truth] can rarely be obtained by . . . one-sided determination of facts decisive of rights." *Joint Anti-Fascist Refugee Committee* v. *McGrath, supra,* at 170 (Frankfurter, J., concurring). Consequently, the child's entitlement to schooling was insecure. It was subject, always, to arbitrary deprivation: the very evil that Due Process is meant to combat.

Of course, some children in the class represented by the Appellees were allowed to attend a "conference" after their "suspension" and a "discussion" beforehand. But, the record shows, the facts of the "suspension" were not to be contested at the "conference". And, at the "discussion", although the child might be allowed to speak, there was a flat policy that his version

of the facts was to be disregarded if in conflict with the version presented by a teacher or administrator. *See* page 10 above.

This did not even approach an opportunity "to be heard". It collided with the second essential requirement of Due Process. That requirement is that the hearing mandated by procedural due process must be a fair hearing. It must be conducted "in a meaningful manner." *Armstrong* v. *Manzo,* 380 U.S. 545, 552 (1965). It is hardly "meaningful" unless the individual not only has the right to speak, but also the right to have what he says *considered.*

The Court has said that "substantively unfair and simply mistaken deprivations . . . can be prevented" when "a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say." *Fuentes* v. *Shevin, supra,* at 81. Obviously, however, mere speaking and listening are not enough. If the State does not fairly consider what it hears, no purpose is served: Words not considered can hardly serve to prevent unfair or mistaken deprivations.

The "discussion" that Columbus principals sometimes held with pupils, then, was not a "hearing" at all. "Suspensions" remained wholly one-sided: Facts were still determined solely on the basis of one version of events. A pupil might present his side; but, if it was in conflict with the charges against him, it would be ignored. He might as well remain silent. If the core requirement of a "meaningful" opportunity to be heard has any meaning, it condemns this hollow form.

The Columbus "suspension" process, therefore, flouted the most basic principle of procedural due pro-

cess. It struck at the very heart of the Due Process guaranty. The Court has *never* permitted such a thing.

The only cases in which the Court has held that there need be *no* meaningful hearing at any time have been cases where *no* "liberty" or "property" interest had been taken away. *E.g., Board of Regents* v. *Roth,* 408 U.S. 564 (1972); *Cafeteria & Restaurant Workers* v. *McElroy,* 367 U.S. 886 (1961); *United States ex rel. Knauff* v. *Shaughnessy,* 338 U.S. 537 (1951); *Ex parte Duncan N. Hennen,* 13 Pet. 225 (1839). *See Arnett* v. *Kennedy, supra,* at 4535 (White, J., concurring and dissenting). In other words, they have been cases in which the Due Process Clause did not apply at all. When—as in this case—it does apply, the requirement of some meaningful hearing at some time has always been enforced.

The law of the Constitution suggests no way in which this requirement may be avoided. (1) In dicta, the Court has indicated that the requirement of a hearing *before* the initial deprivation of a protected interest may extend only to "significant" interests, *Boddie* v. *Connecticut,* 401 U.S. 371, 378-379 (1971); *Fuentes* v. *Shevin, supra,* at 82, 86, or to interests that are not "de-minimus", *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337, 342 (Harlan, J., concurring); *Fuentes* v. *Shevin, supra,* at 90 n.21. But it has never suggested that a vague standard of "significance" or "de minimus" limits the more basic right to a fair hearing at *some* time.

In any event, in the very opinion that included reference to both the "significance" and "de minimus" ideas, the Court held that the interest in possession of an ordinary stereo, for a few days, was neither "insignificant" nor "de minimus". *Fuentes* v. *Shevin, supra,* at 88-90. How, then, could the interest in two weeks of public schooling be "insignificant" or "de minimus"? Indeed, in *Fuentes,* Due Process required a hearing *before* the initial deprivation of the stereo. In a later case, it required a hearing *after* the initial deprivation of a refrigerator and a washing machine. *Mitchell* v. *W. T. Grant Co.,* 42 U.S.L.W. 4671 (1974). In this case, it must require a hearing at some time, before or after the deprivation of public schooling. It would be absurd to suggest that two weeks of public schooling is not at least as worthy of protection as a few days' possession of a stereo or a refrigerator or a washing machine.

(2) It may be that special exigencies of school administration will affect the *form* of hearing to which pupils are entitled. It may be that those exigencies will determine that the hearing, in some situations, be held *after* the initial "suspension". *See* pages 73-75 below. But they cannot obviate the requirement of a hearing at *some* time.

Many times, the Court has faced exigent circumstances that required very prompt action to serve a special governmental need. *E.g., Stoehr* v. *Wallace,* 255 U.S. 239 (1921); *Phillips* v. *Commissioner of Internal Revenue,* 283 U.S. 589 (1931); *Fahey* v. *Mallonee,* 332 U.S. 245 (1947); *Ewing* v. *Mytinger & Casselberry, Inc.,* 339 U.S. 594 (1950); *Astol Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 42 U.S.L.W. 4693 (1974). In these situations, it has allowed the opportunity for a hearing to be postponed. But, in every case, it was held that Due Process required that there be "at *some* stage an opportunity for a hearing."

Ewing v. *Mytinger & Casselberry, Inc., supra,* at 599. Even in "exigent" circumstances, "the opportunity given for [an] ultimate [hearing must be] adequate." *Phillips* v. *Commissioner, supra,* at 597. *See Mitchell* v. *W. T. Grant Co., supra,* at 4675; *Arnett* v. *Kennedy, supra,* at 4537 (White, J., concurring and dissenting).

The Court has held that when property is seized to protect against a bank failure, there must be a hearing at some time. *Fahey* v. *Mallonee,* 332 U.S. 245 (1947). When property is seized to protect the public from misbranded drugs or contaminated food, there must be a hearing at some time. *Ewing* v. *Mytinger & Casselberry, Inc.,* 339 U.S. 594 (1950); *North American Cold Storage Co.* v. *Chicago,* 211 U.S. 306 (1908). Even when property is seized to meet the needs of a war effort, there must be a hearing at some time. *Central Union Trust Co.* v. *Garvan,* 254 U.S. 554, 556 (1921); *Stoehr* v. *Wallace,* 255 U.S. 239 (1921). These were "extraordinary situations". *Boddie* v. *Connecticut, supra,* at 379. If the requirement of some hearing was in force then, it must be in force for wholly ordinary "suspensions" from the public schools. If the exigencies of wartime cannot overcome the right to a meaningful hearing, neither can any supposed exigencies in the public schools. Indeed, if the needs of wartime cannot abrogate this most basic requirement of procedural due process, nothing can.

(3) There are two final considerations that sometimes affect Due Process rights. A "weighing" of the interests at stake may affect the *form* or the *timing* of the hearing required by Due Process. *Mitchell* v. *W. T. Grant Co., supra,* at 4672-4674; *Arnett* v. *Kennedy, supra,* at 4531 (Powell, J., concurring), 4537-4541

(White, J., concurring and dissenting). By the same token, an assessment of the inherent trustworthiness of a challenged process may also affect the *form* or the *timing* of a hearing. *Mitchell* v. *W. T. Grant Co., supra,* 4674-4677; *Arnett* v. *Kennedy, supra,* at 4531 (Powell, J., concurring), 4537-4538 (White, J., concurring and dissenting). See pages 56-65 below. But these considerations, once again, are confined to form and timing. They do not affect the basic right to a fair hearing at *some* stage.

This was made clear—if it was not already clear—last Term. The Court upheld the *ex parte* "sequestration" of possessions. It balanced the interests and concluded prompt action was necessary. It also concluded that the "sequestration" process, proceeding through submission of documentary proof of simple facts to a judicial officer, was a trustworthy one. But these conclusions led it to a narrow holding: It held only that there need be no hearing *before* the property was seized. *Mitchell* v. *W. T. Grant Co., supra.* These conclusions did not affect the right to a fair hearing at some time. Indeed, the Court stated flatly that "a hearing must be had" by the time the seizure of property becomes "final." *Id.* at 4675.

Also last Term, certain members of the Court applied these same considerations to determine that a federal employee is not entitled to a hearing before his dismissal. But, there again, they emphasized that the employee had a Due Process right to a full and fair hearing at a later time, before the dismissal became "final." *Arnett* v. *Kennedy, supra,* at 4530-4532 (Powell, J., concurring), 4532-4541 (White, J., concurring and dissenting).

In the present case, the "suspensions" of the children are long since "final." Thus, whatever may be the balance of interests at stake, whatever may be the trustworthiness of the initial "suspension" process, whatever the form and timing of the hearing required by Due Process, a hearing at some time was required. That hearing was never granted to the children in Columbus.

No device—not an idea of "insignificant" or "de minimus" interests, not a doctrine of "exigent" circumstances, not a "weighing" of interests, and not an evaluation of the trustworthiness of the challenged procedure—can undermine the basic principle of Due Process. The simple right to a fair hearing, of some kind at some time, cannot be compromised. If it were, Due Process would mean nothing.

The conclusion cannot be escaped: The Columbus "suspension" procedure, without provision for a fair hearing at any time, is unconstitutional. It is not just *prima facie* unconstitutional. It is simply unconstitutional.

IV. THE REALITIES OF SCHOOL "SUSPENSION" SUPPORT THE DISTRICT COURT'S HOLDING THAT DUE PROCESS REQUIRED A "HEARING PRIOR TO SUSPENSION OR WITHIN A REASONABLE TIME THEREAFTER"

It is settled that Due Process required a "meaningful" hearing at some time for the children "suspended" from the public schools of Columbus. The issues that remain are: At what time were they entitled to a hearing? What form of hearing was mandated by Due Process?

The District Court did not decide the issue of form. It did suggest that an "informal" proceeding, without counsel or trial-type trappings, would satisfy

Due Process.[28] But it did not require any one procedure. There was no need to do so; the unconstitutionality of the "suspension" process was established without addressing the issue. So, the District Court concluded that the "choice of the best procedure for a particular school system should be left [, initially,] to the school officials charged with the administration of that school system."[29] The issue of form, therefore, will not be addressed here.

The issue of timing, however, is more pressing. The District court held that Due Process required a "hearing prior to suspension or within a reasonable time thereafter." Specifically, it indicated that a child must be given a prior hearing, except when there is an immediate need to remove him from the school, due to a threat of major disruption or violence. When immediate removal is necessary, the District indicated, the hearing may not be left until the full period of the "suspension" has gone by; rather, the hearing must be held "not later than 72 hours after the actual removal of the student from school."[30] This resolution of the problem of timing was correct.

Beyond requirement of a "meaningful" hearing at some time, Due Process does not mandate rigid procedures, as to either timing or form, to be applied in every conceivable situation. *See McKeiver* v. *Pennsylvania,* 403 U.S. 528, 543 (1971); *Stanley* v. *Illinois,*

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[28] Other federal courts have held that Due Process requires quite a full adversary hearing for "suspensions" of five or ten days or more, but only an informal hearing for shorter "suspensions." *See* pages 27-28 above. Such a distinction, in terms of the *form* of the required hearing, is not inappropriate.

[29] *Lopez* v. *Williams, supra* note 1, at 1302.

[30] *Id.*

405 U.S. 645, 650 (1972); *Mitchell* v. *W. T. Grant Co.*, 42 U.S.L.W. 4671 (1974). To determine what kind of hearing is required and when, the important considerations are ones of fact. Three aspects of a particular situation must be evaluated: (A) The risk of unfair or mistaken action that is inherent in the situation and the type of hearing needed to reduce the risk. (B) The harm that such action does to the individual. And (C) the extent to which the legitimate purposes of the governmental program in question would be furthered or frustrated by requirement of a prior hearing or a highly formal hearing. *See, e.g., Arnett* v. *Kennedy*, 42 U.S.L.W. 4513, 4530 (Powell, J., concurring), 4532 (White, J., concurring and dissenting) (1974); *Mitchell* v. *W. T. Grant Co.*, supra; *Astol Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 42 U.S.L.W. 4693 (1974).

Therefore, in this case, the timing of the hearing required by Due Process depends on an assessment of the realities of school "suspension". The realities are striking. They support the holding of the District Court. And they show that a fair hearing, before the actual "suspension" whenever possible, is essential to satisfy the purpose of the Due Process Clause.

A.

The Risk of Unfair or Mistaken School "Suspension" Is Truly Extraordinary: It Can Be Reduced Only by Requiring a Prior Hearing Whenever Possible.

There is some risk of unfairness or mistake whenever an official is empowered to deprive a person of life, liberty or property.[31] That is why the Due

[31] Of course, this is particularly true when there is no prior adversary hearing. "When an administrative agency acts on incomplete information, untested by the adversary process and untempered by an opportunity for deliberation, it is far more likely to err." Freedman, *Summary Action by Administrative Agencies*, 40 U.CHI.L.REV. 1, 27 (1972).

Process Clause requires not only that there be a hearing conducted "in a meaningful manner," but also that it be held "at a meaningful time." *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965). "A meaningful time," generally, is *before* a deprivation initially takes place. *E.g., Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 343 (1969) (Harlan, J., concurring); *Boddie* v. *Connecticut*, 401 U.S. 371, 378-379 (1971); *Bell* v. *Burson*, 402 U.S. 535, 532 (1971); *Fuentes* v. *Shevin*, 407 U.S. 67, 80-82 (1972); *Board of Regents* v. *Roth*, 408 U.S. 564, 569-570 (1972). For, if the hearing were not held then, it could hardly reduce the ever-present risk of arbitrary deprivation of protected interests. If it were not held then, it could not serve the purpose of the Due Process Clause: to minimize such deprivations.

There are situations, however, where official safeguards against arbitrary action are very great and very effective. The risk of unfairness and mistake, correspondingly, is low. The Court has held that in such situations a later hearing, before a deprivation becomes "final", will satisfy Due Process. *Mitchell* v. *W. T. Grant Co., supra,* at 4674, 4676-4677. *See Arnett* v. *Kennedy, supra,* at 4531 (Powell, J., concurring), 4538-4539 (White, J., concurring and dissenting). The question is whether the present case falls into this category. It does not.

There are three factors by which to gauge the risk of arbitrariness inherent in a particular situation.

(1) Does the deprivation take place in a relatively cool atmosphere, where any motivation for arbitrary action is slight and relations among the persons involved relatively uncomplicated. (2) What official makes the deprivation decision? Are there safeguards inherent in his office? (3) On what basis does he make the decision? Are there safeguards of requisite proof before he may act? When each of these factors is examined in the context of school "suspensions," it becomes clear that the risk of arbitrariness is extraordinarily great.

(1) The atmosphere in most public schools, as anyone knows, is anything but cool, anything but calm. The physical surroundings, themselves, make the point: "Bells ringing, buzzers sounding, public address systems making all those announcements, thousands of noisy adolescents pushing and shoving their way through crowded halls and stairways, locker doors banging . . . and so on." Bailey, DISRUPTION IN URBAN PUBLIC SECONDARY SCHOOLS 28 (1970). On top of that, in recent years, unrest in public secondary schools has been increasing. *Id.* at 7-12 (describing three major studies of high school unrest). There may be "clashes produced by mixing large numbers of young people and adults who come from very different . . . racial and ethnic strands." *Id.* at 26, 30. And, often, "certain school practices," such as restrictive dress or behavior rules, "can foment dissatisfaction." *Id.* at 26. Administrators and teachers are far from immune to this unsettling atmosphere. In particular, there may be a "serious lack of communication .... when older teachers stay on in a school that has become very different in its ethnic and income characteristics." *Id.* at 30.

In this charged atmosphere, arbitrariness inevitably takes root and flourishes. The motivations for arbitrary, even malicious, accusations of misconduct are legion. Outside quarrels may carry over into the school. A student may make a false accusation against a rival; a member of one racial or ethnic group may make a false accusation against a member of another. And, more important, an administrator or teacher, harried and wishing to be rid of certain students, may color ambiguous facts, or simply lie, out of frustration. Administrators and teachers, after all, come from particular ethnic and racial groups as do students; like students, they mix every day with others they find alien or dislike; they, too, often give way to the tension.

The data, showing the extraordinary numbers of minority children "suspended" from school, simply reveal one aspect of the arbitrariness that is the inevitable characteristic of school discipline. *See* Southern Regional Council & Robert F. Kennedy Memorial, THE STUDENT PUSHOUT: VICTIM OF CONTINUED RESISTANCE TO DESEGREGATION (1973); pages 21-23 above. The Ohio school districts reporting to the U.S. Office of Civil Rights, for example, "suspended" only 3.7% of their white pupils, but 7.8% of their minority pupils, in a single school year. The minority children made up 36.4% of their total enrollment; but they accounted for 55.1% of their "suspensions".[32] The inference of arbitrary "suspension" is strong. How many other arbitrary, individual "suspensions" occur cannot be measured. For, if there *never* is a hearing on a "suspension", it can never be shown that the facts did not justify it.

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[32] *See* note 16 above.

The risk of arbitrariness, then, is inherent in the situation. In *Goldberg* v. *Kelly,* 397 U.S. 254, 264 n. 12 (1970), the Court noted the "welfare bureaucracy's difficulties in reaching correct decisions on eligibility." The risk of mistakes there was significant. But it, surely, is greater here. Welfare officials do not live, day-in-day-out, with their clients in an atmosphere of continuing tension. They do not have to make their decisions on the spot, but can return to faraway offices. School administrators and teachers are not so fortunate. The consequent danger of arbitrariness cannot help but be more acute.

The Court has said that *ex parte* decisions made in judicial surroundings bear a low risk of arbitrariness. *Mitchell* v. *W. T. Grant Co., supra,* at 4676. But the courtroom or the judge's chambers is literally worlds away from the heated atmosphere of a public school. In the former context, Due Process may permit delay of a hearing; in the latter context, it may not.

(2) The second factor to consider is the nature of the official—the school administrator—who decides to deprive an individual of a protected interest. Are there safeguards against arbitrariness inherent in his office? The Court has held that there are such safeguards inherent in the office of a judge, and that a judge may be counted upon to minimize the risk of arbitrary action. *Mitchell* v. *W. T. Grant Co., supra,* at 4676. But a school administrator, skilled as he may be, is no judge.

He, plainly, lacks the training in determining credibility, sifting facts for relevance, and assessing the adequacy of proof. That is a judge's job; the principal or assistant principal has other things to do. But, even more important, the school administrator,

unlike a judge, is hardly neutral or detached from the disputes that come before him.

He is intimately involved. Often, as in the cases of several of the Appellees, the administrator is witness, "prosecutor", and "jury", all rolled into one. Inevitably, the students charged with misconduct are individuals he deals with, for better or worse, every day; his evaluation of charges against them will be colored by what he already knows, by positive or negative personal feelings he has about them. By the same token, he is familiar with the teachers or students who make the accusations. He cannot set himself apart from past associations, conflicts, and likes or dislikes, however irrelevant they may be, when he is asked to "suspend" a child.

His "suspension" decisions, moreover, are subject to myriad pressures. He is not only familiar with the teachers and students who come before him. He must continue to work with them. He cannot help but be influenced, in determining the truth of "suspension" charges, by the internal politics" of the school. Teachers, indeed, hold a special power over him. They expect to be "supported" in their accusations against students. If they are not, they will join together to demand "support". The administrator is caught in a bind.

In this institutional context, the school principal or assistant principal is ill equipped to make *ex parte* determinations of fact that are predictably fair and reliable. He may be conscientious. But the risk of arbitrariness is inherent in his office.

What is more, there is no check on arbitrariness. The "suspension" decisions of a school principal are

often invisible. A judge's decisions are subject to public and professional scrutiny. *See Mitchell* v. *W. T. Grant Co., supra.* A federal bureaucrat's decisions are subject to control by superiors. *See Goldberg* v. *Kelly, supra; Arnett* v. *Kennedy, supra.* But principals, typically, are free from public scrutiny and superior control when they "suspend" children. In Columbus, Ohio, the central school authorities reported to the U.S. Office of Civil Rights that they had no information at all on how many students their principals had "suspended" in the 1972-1973 school year.

(3) The inherent risk of arbitrariness depends, finally, on the basis for the deprivation. What is required before it may take place? In some instances, there may be safeguards that will reliably screen out unfair or mistaken deprivations. Here, there were none.

In *Mitchell* v. *W. T. Grant Co., supra,* the Court found several safeguards which, it held, so reduced the risk of arbitrary action that a hearing could be delayed. First, the party seeking a seizure of possessions, in that case, was required by State law to post a bond and was liable in damages if the temporary seizure turned out to be wrongful. *Id.* at 4674, 4676. Second, that party was required to submit to a judge an affidavit stating the "specific facts" that justified the seizure. *Id.* at 4676. Third, the issue involved was "ordinarily uncomplicated", having nothing to do with "fault." *Id.* at 4674, 4676. And, fourth, the issue lent itself to simply "documentary proof" that could be shown to the judge. *Id.* at 4674, 4676-4677. These safeguards, taken together, were thought by the Court to "minimize the risk" of a wrongful deprivation and "corresponding[ly] decrease the utility of an adversary hearing which will be immediately available in any event." *Id.* at 4676, 4677.

Similarly, in *Arnett* v. *Kennedy, supra,* Mr. Justice Powell observed that there were safeguards to "minimize the risk of error" in removing a federal employee that permitted postponement of a hearing. He noted that the "employee is provided with 30 days advance written notice of the reasons for his proposed discharge and the materials on which the notice is based. He is accorded the right to respond to the charges both orally and in writing, including the submission of affidavits. . . . After removal, the employee receives a full evidentiary hearing, and is awarded back-pay if reinstated." *Id.* at 4531-4532. *See id.* at 4538-4539 (White, J., concurring and dissenting).

A school "suspension" in Columbus was not subject to these safeguards. There was, of course, no 30 day interval before "suspension", no requirement of a bond or liability in damages if an accusation proved false, and no sworn affidavits. Most important, the truth of the charge typically did not depend on "uncomplicated" issues. It was not subject to simple documentary proof. For, unlike the seizure of property in *Mitchell,* it depended on a determination of "fault."

There was, indeed, nothing to minimize the risk of arbitrary "suspensions", and everything to increase it. There was no strong deterrent to false accusations. In any event, the truth of an accusation would never be finally determined since there was no later hearing. "Suspensions" depended on spur-of-the-moment

charges. They were not clarified, supported or challenged through formal, to say nothing of sworn, statements. The school rules that students were accused of breaking were extremely vague,[33] permitting much leeway for unstructured discretionary application. And the factual issues involved—Did the student "intentionally" break a rule? Was it really *this* student who was seen smoking on school grounds? Who pushed whom first?—were highly complex. But they were resolved hastily and one-sidely.

The only prerequisite, in fact, to a "suspension' in Columbus was the oral accusation. To be sure, a student was sometimes permitted to join a "discussion" of the matter with the principal. But if he protested his innocence, the principal would automatically rely on the word of his accuser.[34] *See* page 10 above. This "discussion" could not screen out any mistakes.[35] And

[33] The offenses with which the Appellees were charged illustrate the point. *See* page 13 above.

[34] The record shows that this was true if the accuser was a teacher; but the record is silent on whether the principal held a "discussion" at all when the accuser was another student.

[35] To be sure, when the Court has held that Due Process requires a prior hearing, it has often said that the hearing could be informal and limited to the "probable validity" of an initial deprivation. *E.g., Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 343 (Harlan, J., concurring); *Bell* v. *Burson*, 402 U.S. 535, 542 (1971); *Fuentes* v. *Shevin*, 407 U.S. 67, 97 (1972); *Morrissey* v. *Brewer*, 408 U.S. 471, 485-486 (1972). But the "discussion" at issue here was *not* such a prior hearing. In each of the past decisions requiring a hearing on "probable validity," the Court required that both sides be allowed to contest the question of "probable validity" and that the decisionmaker *consider* what *both* sides said. That was not done by the Columbus principals. Moreover, the "probable validity" hearings required in the past have always been preliminary to a full, later hearing, at which

there was nothing that could. The child was not just guilty as accused, he was guilty *because* he was accused.

Surely, then, this "suspension" process had none of those characteristics, reducing risks of arbitrary action, that have led the Court, in some cases, to permit delay of a fair hearing. The risks could be reduced, and the purpose of the Due Process Clause served, only by holding a fair hearing before "suspension".

B.

A Mistaken "Suspension" Does Serious Harm to the Child: It Can Be Prevented Only by Opportunity for a Prior Hearing.

Just as the risk of arbitrary "suspension" was great, so was the harm it inflicted on the children. It was a harm that could be avoided only by provision of a prior hearing. This is the second general consideration in the weighing of interests to determine whether Due Process mandates such a hearing.

The collateral harms of an arbitrary "suspension" are great by themselves. The record and briefs[36] are replete with description of the psychological cost imposed by such a "suspension" on a child. *See* page 15 above. If a child is in fact "innocent" and had no opportunity to prove it, he will be bewildered, frustrated and angry; fellow students and teachers will see

the individual would be fully compensated for the temporary deprivation if it turned out to have been wrongful. That opportunity, also, was denied by the Columbus school officials. *See* note 43 *infra*.

[36] Brief of Appellees, at 33-34; Brief *Amicus Curiae* of National Association for the Advancement of Colored People *et al.*, at 10-14. The District Court's Findings of Fact include six clear psychological harms worked by arbitrary school "suspensions." *Lopez* v. *Williams*, *supra* note 1, at 1292.

him as a "troublemaker"; he, himself, may even come to accept that role.[37] Perhaps such consequences are too evanescent to achieve the status of a dollar bill under the Due Process Clause. Even an adult federal employee wrongfully discharged from his job, *see Arnett* v. *Kennedy, supra,* must feel frustration. But psychological harms should not be ignored here, because the individuals involved are not adults, but children, for whom such harms are magnified tenfold.

More tangible collateral harms are also amply illustrated in the record and briefs.[38] The permanent record kept of "suspension" is a time bomb that can explode to harm the child at unexpected times, in unexpected places. It is always available to the police. It is used in preparing teachers' recommendations of the child for jobs or higher education. *See* page 15 above. Again, these harms are speculative.[39] A discharged federal employee. too, must live with potentially harmful stigma of his discharge. But, once more, this case involves children. More opportuni-

[37] In theory, a "suspended" child is sent home. In fact, if his parents work, he is sent out on the streets. There, feeling resentful and idle, he may well drift into delinquency.

Moreover, whether at home or on the street, the child labelled a "troublemaker" may well be reinforced in any tendencies he has to assume that role. *See* page 15 above.

[38] Brief of Appellees, at 34-38; Brief *Amicus Curiae* of National Association for the Advancement of Colored People *et al.*, at 15-16; Brief *Amicus Curiae* of National Committee for Citizens in Education *et al.*, at 18-20.

[39] The school authorities of Columbus, however, apparently believe that there are serious harms that do result from the record of "suspension". Why else would they have provided, in July 1973, that, in the future, all record of "suspensions" found to have been mistaken should be expunged? *See* pages 7-8 above.

ties are open to them; and more can be closed by the recorded label of "troublemaker".

While the collateral harms of "suspension", therefore, are serious, the crux of this case is the immediate harm done to the child: the exclusion from school for one or two weeks and the transfer to another school, or to a night school, that often follow. Each day of "suspension" earns the child a "zero". Each day's classes cover work that the child is not allowed to make up. The cumulative learning process in which one day's class builds on the day before is interrupted. The child is excluded from the only stable social setting he knows, other than his family. And, if his "suspension" serves as a predicate for transfer to another school, these harms are exacerbated.

To be sure, the harm might be greater if he were "expelled".[40] But one week of "suspension" is 6% of a school semester in Ohio; two weeks of "suspension" amount to 12% of the semester.[41] If snow were to close the schools for two weeks, would not the school authorities add on two weeks at the end of the school year to make up what was lost? If teachers went on strike for even one week, would not the

[40] In fact, "suspensions" for a week or two have a way of expanding in duration, as they did in the cases of two of the Appellees. *See* page 13 above. Moreover, available data show that, in a single school year 39% of children "suspended" at least once were, actually, "suspended" twice, and 25% were "suspended" three or more times. *See* page 24 above. As the number of weeks lost mounts, the distinction between a "suspension" and an "expulsion" disappears.

[41] This calculation is based on the requirement in Ohio of a minimum school year of thirty-two weeks. Ohio Rev. Code § 3321.04.

authorities go to court, seeking a preliminary injunction on the ground that "irreparable harm" to education was being done? If the State of Ohio believes that school attendance for a full thirty-two week year is not of vital importance, then why has it made that attendance compulsory?[42]

Of course, precise measurement of the educational harm done by a "suspension" is impossible. If a child is "suspended" on the day of an important test or a particularly important class, the "suspension" even for one day might affect his grades for the year. In other circumstances, or for other individual students, no clear effect on grades will be observed. But Ohio's compulsory attendance law does not permit a child to leave school for one or two weeks simply on a showing that his grades would not be affected. By the same token, Due Process rights cannot depend on B-pluses and C-minuses.

What is important, for the purposes of the Due Process Clause, is that it is public schooling at stake. Schooling is the most important interest that a child has, besides the care of his family. Deprivation of schooling does not affect his present income, *see Sniadach* v. *Family Finance Corp., supra; Goldberg* v. *Kelly, supra; Arnett* v. *Kennedy, supra,* but it does affect his present intellectual and emotional growth. It does not affect his ability to drive a car or move around the country, *see Bell* v. *Burson, supra,* but it will affect his ability to move up through society. Education touches not only a child's interests in "property", but also in "liberty".

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[42] *Id.*

The Court has held that a few days' possession of a stereo was important enough to support a claim for a prior hearing. *Fuentes* v. *Shevin, supra.* This holding has been limited, but explicitly not overruled. *Mitchell* v. *W. T. Grant Co., supra.* Surely, if deprivation of a stereo for a few days must be preceded by a hearing, so must deprivation of schooling for two weeks.

Unlike a job, *Arnett* v. *Kennedy, supra,* or a stereo, *Fuentes* v. *Shevin, supra,* or a refrigerator, *Mitchell* v. *W. T. Grant Co., supra,* schooling lost cannot be quickly replaced. When a child is "suspended" from one school he cannot go out and find another one. Nor can he post a bond, *Sniadach* v. *Family Finance Corp., supra,* at 343 (Harlan, J., concurring); *Bell* v. *Burson, supra,* at 536; *Fuentes* v. *Shevin, supra,* at 85; *Mitchell* v. *W. T. Grant Co., supra,* at 4673, and undo his "suspension".

It is plain that only a prior hearing can avoid all of the harms worked by an arbitrary school "suspension". A later hearing could allow the child to enjoy a sense of bitter vindication. It could restore his standing in the school. It could result in expungement of official records of his "suspension" or in an order that he be allowed to make up work he missed. And, if held promptly while the child is still out of school, it could reduce his period of "suspension". These possible remedies—which, of course, were not provided by the Columbus school authorities—are significant and show the importance of requiring a hearing at *some* time. But they cannot undo the child's humiliation or his absence from the classroom learning process for several days. Even if there were provision for

damages, the child could not be made whole for his educational loss.

Schooling is not like a property interest whose only function is to produce income or immediate enjoyment. Temporary loss of an income-producing asset can be compensated later by a damage award. *See, e.g., Arnett* v. *Kennedy, supra; Astol Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 42 U.S.L.W. 4693 (1974). Temporary loss of enjoyment of household possessions can also be compensated by damages. *See, e.g., Mitchell* v. *W. T. Grant Co., supra.* But temporary loss of schooling, a cumulative learning process, cannot later be fully compensated, for the time has past and the damage has been done. [43]

C.

The Legitimate Goals of the Public Schools Would Not Be Frustrated by Requirement of a Minimally Fair Hearing Before, or Promptly After, "Suspension": To the Contrary, Those Goals Would Be Promoted by Such a Requirement.

The risk of arbitrary "suspension" is great. The resulting harm is serious. Only a prior hearing can reduce the risk and the harm. It remains only to determine the impact of such a hearing on the operation of the public schools.

Of course, the schools have an urgent need for discipline. Discipline is not the primary purpose of public education—that purpose, in the words of the Ohio courts, is to enable children to "realize their potential" [44]—but it is necessary, to a degree, if the primary purpose is to be fulfilled. The power of public schools to discipline their students is not at issue here. What is at issue is (1) whether any purpose is served by unfair or mistaken "suspensions", and (2) whether requirement of a prior hearing to screen out arbitrary "suspensions" would seriously impede other school functions.

(1) The harm to be prevented by a prior hearing is simply the imposition of *unfair* or *mistaken* "suspensions". The question is whether those particular "suspensions" promote any legitimate school goal. They do not.

The purposes of discipline are not served by punishing an innocent person. A child subjected to an unfair or mistaken "suspension" learns nothing about obedience to school rules—unless he learns that the rules are meaningless in application. He learns no respect for those in authority. Frustrated and angry, he may *become* the "troublemaker" that school officials believe him to be. Discipline suffers.

Eventually, arbitrary "suspensions" will be widely recognized to be arbitrary. Any deterrence they may have achieved will crumble. For once "law and order" is perceived to be unfair, order breaks down. Charles Silberman has written that careless punishment in the schools "serves only to breed more defiance and destruction, which breeds more repression . . . especially when accompanied by . . . arbitrariness, racial prejudice, assumption of student guilt and general disregard of individual rights." Silberman, Crisis In The Classroom 340 (1970).

Arbitrary "suspensions" not only fail to serve a disciplinary purpose. They *dis*serve that purpose.

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[43] For this reason, the prior hearing required by Due Process should not be limited only to the "probable validity" of the "suspension." *See* note 35 *supra.*

[44] *E.g., State* v. *Gans*, 151 N.E.2d 709, 713-714 (1958).

School administrators, therefore, have an interest in preventing them that runs parallel to the interest of their victims.

But there is more to it than that. "Suspensions" that are unfair or mistaken also *dis*serve a school purpose more fundamental than discipline. That is the purpose of educating children. The State law of Ohio obliges the schools to provide a free education to children who are "residents between six and twenty-one years of age." Ohio Rev. Code §§ 3313.48, 3313.64. And it mandates a thirty-two week school year. Ohio Rev. Code § 3321.04. When the schools arbitrarily remove such children from school, they undercut their own reason for existence.

Once the government establishes a program of welfare or paroles, the Court has said, it has an interest in ensuring that all eligible individuals benefit under the program. A hearing before termination of the benefit, the Court has held, promotes that governmental interest. *Goldberg* v. *Kelly, supra,* at 264-265; *Morrissey* v. *Brewer, supra,* at 483-484. Similarly, once the State establishes a system of public education, it has an interest in ensuring that all eligible children receive that education. A hearing before children are removed from school promotes that interest.

(2) But would a prior hearing, in and of itself, seriously impede school operations? It is sometimes suggested that such a hearing would (a) take time in which disruption could continue, (b) undermine the authority of school administrators, (c) break down the "parental" relationship between administrators and students, and (d) take teachers and administrators away from their educational duties. The latter three

arguments are plainly insufficient to obviate the Due Process requirement of a prior hearing. The first is sufficient only to qualify that requirement, not eliminate it.

(a) The District Court, in this case, did *not* hold that Due Process demands a prior hearing in *every* case of "suspension". Rather, it recognized that "immediate removal of a student" might be necessary in particular situations where the student would continue to disrupt the academic atmosphere, or endanger persons, or damage property.[45] This rule, if interpreted narrowly, is proper and eliminates any danger that could be created by a prior hearing.

In truly exigent and "extraordinary" situations, requiring prompt action, Due Process has traditionally permitted a hearing to be delayed. *E.g., Fahey* v. *Mallonee,* 332 U.S. 245 (1947); *Ewing* v. *Mytinger & Casselberry, Inc.,* 339 U.S. 594 (1950); *Astol Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 42 U.S.L.W. 4693 (1974). *See Boddie* v. *Connecticut,* 401 U.S. 371, 379 (1971). An imminent threat of continued disruption or physical violence in a public school would seem to justify delay of a hearing under this principle. But the threat must be genuinely imminent, and the threatened disruption substantial, if the principle is not to be abused and the purpose of procedural due process frustrated. Such emergency situations do exist. But they are truly "extraordinary".

It may be that some of the Appellees were "suspended" in circumstances that would have permitted delay of a hearing. But most were not. Two of them

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[45] *Lopez* v. *Williams, supra* note 1, at 1302.

were notified of their "suspension" after they had been allowed to finish the day and go home. (App. 128-129, 133.) They, apparently, had not presented any imminent threat. One was "suspended" after asking if she could leave school during the day. (App. 138-139). This was no threat to disrupt school operations.

Of course, these "suspensions" occurred at a time of confrontations and demonstrations in the schools. That fact might have permitted some hearings to be delayed. However, the record shows that when one fortunate student appeared with a lawyer in the middle of the demonstration, the principal was able to hold a hearing:

> "A. . . . We had one student, Mr. William C. Harris, and Ms. William Harris and their attorney came in. This was in about ten minutes of this incident. We had a hearing for this particular case, at that time.
>
> Q. Was that an unusual sort of procedure? A. I would say that was unusual when someone comes in with an attorney, yes, this is unusual."

(App. 101.) And, in cases of the Appellees, hearings were not simply delayed. They were *never* held.

More importantly, the cases of these particular Appellees are not the only ones at issue here. This is a class action. The members of the class are all children "suspended" from the Columbus public schools over a two-and-one-half year period. Most of them were not "suspended" at a time of confrontation. They were "suspended" in normal times.

In normal times, the rule of exigency will not usually apply. The many children who are "suspended" for

non-aggressive actions—such as smoking, drinking, dress code violations, tardiness, truancy or simply "goofing off"—are unlikely to create any disruption while they await a hearing. And the children "suspended" for more aggressive acts—such as fighting, swearing, "talking back" to a teacher, or throwing spit balls—are usually unlikely to remain aggressive once they are brought to the principal's office for a hearing.[46] Obviously, the countless children who are "suspended" arbitrarily, on the basis of unfair or mistaken accusations, pose no threat at all. Normally, then, there is time for a hearing without serious fear of trouble.

Clearly, this was the case in Columbus. The record indicates that principals usually held a "discussion" with students before "suspension". This "discussion", of course, was a hollow form. *See* pages 10 and 49 above. But, if there was no threatened disruption to delay the bogue "discussion", then there was none to justify delay of a fair hearing.

Finally, it should be plain that even in exigent circumstances where no prior hearing is held, a *prompt* hearing is still possible. A "cooling off" period may be justified. But to wait the full two weeks of a "suspension" is not justified. A day or two—the District Court suggested 72 hours—is more than enough time to "cool off," and then hold a fair hearing while the "suspension" can, at least, be reduced if found to be mistaken.

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[46] The survey of more than 8,000 households conducted by the Children's Defense Fund, *supra* note 24, revealed that of all the children in those households who had been "suspended" from school less than 40% had been charged with even minimally violent behavior, such as fighting or destruction of property.

(b) Nonetheless, it is sometimes suggested that holding hearings will undermine the authority of school administrators: It will allow their commands to be questioned; it will show that they often make mistakes; and it will make them more reluctant to "suspend" any children. These purported effects of a hearing requirement are hardly very weighty in the scales of the Due Process Clause.

A principal must have authority, to be sure. But he is not meant to be a dictator. "In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students." *Tinker* v. *Des Moines Indep. Community School District,* 339 U.S. 503, 511 (1969). That a principal's commands will be questioned, and that he will be shown to be fallible, then, are not events to be feared. They are inevitable facts of life under a Constitution that treats children "in school as well as out of school" as persons "possessed of fundamental rights which the State must respect." *Id.*

Requirement of a "suspension" hearing, in any event, will not greatly reduce the principal's power. The hearing will affect only the determination of facts, the determination that a student did violate a school rule. The principal will retain his discretionary power to act as he thinks best once a violation is established. "A simple factual hearing will not interfere with [this] exercise of discretion." *Morrissey* v. *Brewer, supra,* at 483.

Nor will a hearing requirement seriously undermine the principal's position in his school. At first, when the federal courts required schools to hold hearings,

the reaction was shock and dismay; anarchy seemed around the corner. But, now, many schools have experience with "suspension" hearings. They have found that fair procedures actually increase respect for authority. One principal has written that "when due process is followed . . . [t]he operation of the school can be greatly enhanced rather than disrupted or impeded." DeBruin, *Education and Due Process,* 90 EDUCATION 174, 182 (1969). Another has predicted that "[a]dministrators and teachers will come to learn that due process will strengthen, not weaken, their positions within their school and community." Ferguson, *Due Process—Is Now,* 57 NASSP BULL. 95, 99 (1973). This is to be expected. For the "moral authority of a conclusion [such as a "suspension"] largely depends on the mode by which it is reached. . . . No better instrument than due process has been found for generating the feeling . . . that justice has been done." *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 171-172 (1951) (Frankfurter, J., concurring).

It may be that requirement of a hearing will cause principals to "suspend" fewer children. Certainly, it will screen out "suspensions" that are demonstrably unfair or mistaken. But that will be a gain, not a loss, for the public schools. *See* pages 71-72 above. Just as certainly, if other "suspensions" are really necessary to school discipline, hearings will not stop them. So long as a principal has convincing evidence that a student broke a school rule, he can remove the student after a hearing just as he did without one.

Perhaps, also, a hearing requirement will cut down on "suspensions" in more marginal cases. In view of the shocking number of children now being thrown

out of school every year, however, it would be valuable all around for principals to think twice before imposing this extreme sanction. *See* pages 19-24 above. There are many disciplinary measures short of "suspension". In the last few years, public schools have begun to develop such alternatives. One principal recently told a conference of secondary school principals that he re-examined the use of "suspensions" in his school and determined that they were unnecessary in most cases. "In some cases," he said, "we realized that out-of-school suspensions would be needed; for example, in situations where hot tempers as a result of a fight required cool-off time away from school." But, for the other cases, he set up an "in-school suspension center" where students could continue their studies. "Students respect it," he concluded, "and it has cut down on many kinds of disciplinary problems in the school." Johnson, ***Student Disciplinary Codes—What Makes Them Tick,*** Speech Delivered to Annual Conference of the National Association of Secondary School Principals, February 2-7, 1973, at 4.

(c) If reduction of principals' authority, therefore, is no serious problem, there is still the common suggestion that "suspension" hearings will break down the close "family" relationship between school officials and students. To be sure, a hearing, setting accusers on one side and students on the other, may seem inconsistent with a "family" relationship. But, in plain fact, the public school is ***not*** a "family".

"In the modern school setting," with hundreds of students, administrators and teachers do "not and perhaps cannot have an individual, parent-like concern for a child's welfare." Buss, ***Procedural Due Process for School Discipline,*** 119 U.Pa.L.Rev. 547, 560 (1971).

It is particularly inappropriate to speak of a "family" relationship when the purpose is to throw a child out of school. Real parents cannot take any such action. A "suspension", after all, temporarily severs the very relationship that procedure without a hearing is said to preserve.

School officials may argue that "suspension" sometimes is in the best interests of the child. But the child, and his parents, have every right to disagree. If the parties stand at arms length, if there is a conflict of interests, it is inherent in the situation; it is not caused by any hearing requirement.

A relationship of mutual respect and trust, of course, is important in the public schools. But a hearing requirement will build such a relationship, not destroy it. Neither respect nor trust is fostered by one-sided decisionmaking so crucial to the child. One school administrator has written, "[suspensions] do not need to become wellsprings of discord or bitterness. By ensuring that [they] take place in accordance with due process and for specific serious acts, school [officials] will earn trust as they perform this important quasi-judicial function." Winston, ***Expulsions and Due Process,*** 54 PHI DELTA KAPPA 699 (1973).

(d) The final argument sometimes offered to oppose "suspension" hearings is that they will take time away from the educational functions of administrators and teachers. Hearings, of course, will take some time, but they need not take inordinate time. And what they do take will be time well spent.

The District Court, in this case, did not require "suspension" hearings to follow formal trial-type procedures. They may be quite informal and still be fair.

They may need to take no longer than an hour or so, in most cases. They may be held in the afternoon, after class hours, to avoid interference with the normal school day. The principal may appoint a special assistant, more insulated from the internal "political" pressures of the school, to preside at the hearings, and thereby free himself of the burden. He may opt for less drastic alternatives to "suspension". See page 78 above, in some cases to reduce the number of hearings necessary. The school, in other words, "is not without weapons to minimize" the cost of the hearings. *See Goldberg* v. *Kelly, supra,* at 266.

The process might seem inefficient, if the test of efficiency is removing as many children as quickly as possible from the school building. But, in the public school context, efficiency is measured not just in time and numbers, but also in fairness, good will and trust. Most important, efficiency is hardly served by countless mistaken "suspensions". An investment in hearings is an investment in reliable decisionmaking on a matter that touches the core of the public school's function. *See* page 72 above.

The time taken for hearings will not be taken *from* an educational function. It will be taken *for* an educational function. School officials would not "suspend" a student if they did not think it would serve a school purpose; thus, resources expended on "suspensions" are not unconnected to the school's "education." But, more fundamentally, the hearings themselves will "educate." A Policy Statement on Discipline issued by the Columbus Public School System proclaims "a responsibility to teach proper behavior patterns . . . necessary in a democratic society." (App. 55.) One of those

"behavior patterns" is embodied in the process of a fair hearing.

Time and again, the arguments of cost-saving and time-saving have been raised against enforcement of Due Process rights. Inevitably, a hearing takes an official away from other tasks. But, if the official has the time to deprive a person of liberty or property, he must take the time to do it fairly and carefully. Again and again, the Court has held that "the Constitution recognizes higher values than speed and efficiency." *Stanley* v. *Illinois,* 405 U.S. 645, 656 (1972). *See, e.g., Goldberg* v. *Kelly, supra; Morrissey* v. *Brewer, supra.*

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Thus, the District Court's holding that Due Process requires a "hearing prior to suspension or within a reasonable time thereafter" creates no horrible problems for the public schools. In fact, the hearing requirement will promote, rather than impede, legitimate school functions. When this State interest in the requirement is added to the fact that the present risk of arbitrariness is great and the resulting harm to individual children very serious, it is plain that the realities of school "suspensions", weighed in the balance, support the holding of the District Court.

V. AFFIRMANCE OF THE DISTRICT COURT'S HOLDING WILL NOT LEAD DOWN ANY SLIPPERY SLOPE

It is established that Due Process requires a fair hearing before, or promptly after, "suspension" of a child from public school. It is a short step—if a step at all—to the conclusion that this Court should, therefore, affirm the judgment of the District Court in this case. Yet there may be lingering doubts about the implications of such an affirmance: Should the Court

"become involved" in the administration of the public schools? Will a right to a hearing before "suspension" lead to hearings about all and sundry types of disciplinary sanctions in the schools?

A short answer to the first question is: It is not the Court, but the Constitution, that is "involved" when a public school treads on the fundamental rights of school children. The Court does not decide to tell school administrators what to do. It interprets the Constitution. The administrators, too, are capable of interpreting the Constitution's commands; and if they obey them, there need be no occasion by intervention by any court.

A somewhat longer answer to the question is: This Court has long been "involved" when public schools deny constitutional rights. It has reviewed the decisions of school authorities on what courses they will teach, *Meyer* v. *Nebraska*, 262 U.S. 390 (1923), what subjects may be mentioned in the courses, *Epperson* v. *Alabama*, 393 U.S. 97 (1968), what religious observances they will conduct, *e.g.*, *Engel* v. *Vitale*, 370 U.S. 421 (1962), what patriotic observances they will require, *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624 (1943), and what sorts of "disruptive" conduct they may punish, *Tinker* v. *Des Moines Indep. Community School District*, 393 U.S. 503 (1969).

To be sure, school officials have a broad discretionary authority that should not be too tightly constricted. But, already, the Court has reviewed the most particularized discretionary decisions by individual school principals in the context of the First and Fourteenth Amendments. *Tinker* v. *Des Moines Indep. Community School District*, *supra*. *See Healy* v. *James*, 408 U.S. 169 (1972). Here, the Court is asked to do no such thing. Rather, under the Due Process Clause, it is asked to review a broad statutory and regulatory policy and city-wide administrative practices in the Columbus schools. No individualized discretionary decision is at issue.

School authorities, Mr. Justice Jackson wrote for the Court, "have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." *West Virginia State Board of Education* v. *Barnette*, *supra*, at 637. What is at stake in this case is whether youth will be taught "to discount" the principle of procedural fairness as a "mere platitude." Any hesitation to review school officials' actions, to resolve such a basic issue, should be quickly put aside. The Court has acted in the past. It should act now.

There should not be concern that a Due Process requirement of hearings on "suspensions" will lead, willy-nilly, to requirement of hearings on every conceivable disciplinary decision by school principals. Horribles are often paraded down slippery slopes for the purposes of argument; but, in fact, this Court is quite able to draw lines that conform to constitutional purposes. *See, e.g., Kirby* v. *Illinois*, 406 U.S. 682 (1972); *United States* v. *Kras*, 409 U.S. 434 (1973).

The issue in this case is limited to one extreme type of school punishment: *exclusion* from the school. "Sus-

pension" means deprivation of education, deprivation of an interest in "liberty" and "property". In-school punishments, on the other hand, need not work a deprivation of education. *See* page 78 above. The distinction is a clear one. It can be maintained. Other disciplinary sanctions, such as corporal punishment, may raise other problems under other constitutional provisions. But the affirmance of the District Court's Due Process holding here can be easily confined.

VI. CONCLUSION

For a case whose outcome will affect the lives of tens of thousands of children across the Nation, the issue here is remarkably simple. The children ask to be heard when the State deprives them of the one interest, besides their family, that means the most to them. They ask only that the allegations, underlying the deprivation, be tested through the most traditional process in Anglo-American law: a fair hearing. Here, as so often, the simplest issues are the most important.

The law of the Due Process Clause is almost as simple as the issue it must resolve. An interest in liberty and property is at stake. Therefore, there must be an opportunity for a fair hearing. The law is so clear that one marvels at the controversy that has surrounded it.

Yet controversy there is. The Appellants would have this Court hold that public education is an interest not protected whatsoever by the Due Process Clause. They would, thereby, tear down a thriving body of doctrine that has evolved, over ten years, in the lower courts. Amidst the ruins, many public schools that have sought to follow court rulings and develop fair procedures would be left to return to the old ways. The public schools that resist any change would be given the imprimatur of this Court to continue the casual, no doubt careless, removal of children from the classroom.

It has taken time to bring the most ancient of procedural rights into the public schools. But progress has been made. Increasingly, school officials are adopting due process into their administrative curriculum. "It seems surprising", one principal wrote, "that we of the public schools, responsible for the education and development of young people, would have [had] to be told by the courts that young people are individuals—individuals with basic human rights. The developing philosophy in education for years has been to treat and teach students as individuals. The courts [have] recogniz[ed] and support[ed] this philosophy."[47] It would be a sad day indeed, if this court were now to scrap all of this progress, to hold that young people are not individuals with basic human rights once they enter the school building.

We urge the Court to put its hand to the task long undertaken by the lower courts, now joined by many school officials, that promises, one day, to assure children the fundamental fairness that is their birthright. We urge that the judgment of the District Court be affirmed.

Respectfully submitted,

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[47] Ritchie, *Due Process and the Principal*, 54 PHI DELTA KAPPA 697, 698 (1973).

APPENDIX

APPENDIX A

Student Suspensions During the 1972-1973 School Year as Reported to the Office for Civil Rights

In the fall of 1973 the Office for Civil Rights (OCR) of the Department of Health, Education and Welfare for the first time included questions regarding student suspensions in its National School Survey of Public Elementary and Secondary Schools which is required under Title VI of the Civil Rights Act of 1964 and under Title IX of the Education Amendments of 1972. School districts were requested to provide for each school "the number of pupils suspended at least once from this school campus during the previous school year" and "the total number of suspension days from this school campus during the previous school year." (Form OS/CR 102, Items X. A.B.) In addition, each district was asked to include on the "School System Summary Report" a total, by race and ethnic group, of the number of pupils suspended at least once from any school campus in this system during the previous school year." (Form OS/CR 101, Item VII.B.)

In connection with a study it has undertaken of school-age children who are out of school, or who have special needs not met by their schools, the staff of the Children's Defense Fund did a detailed analysis of the suspension data submitted to OCR in five states—Arkansas, Maryland, New Jersey, Ohio and South Carolina. The Children's Defense Fund wanted to determine the extent to which suspensions were actually being used by school districts in those states, and the extent to which students were out of school as a result of suspensions. The school districts surveyed by OCR in the fall of 1973 represent over 50 percent of the pupils enrolled in public schools in these five states. More than 150 thousand students were reported suspended in these districts during the 1972-1973 school year.

In Tables I-V, the suspension data submitted by the 402 districts surveyed by OCR in the fall of 1973 are set forth

by state. For each district, information is included on the total number of students enrolled, the number of students reported suspended at least once during the 1972-1973 school year, the total number of suspension days (total number of days missed as a result of all suspensions) and the percentage of the enrollment that was suspended at least once. Brief summaries of the data set forth on Tables I-V follow.

ARKANSAS

(10,349 Students Suspended)

About 60 percent of the approximately 461 thousand students enrolled in Arkansas public schools in fall, 1972 were enrolled in the 147 school districts surveyed by OCR in fall, 1973. Almost four percent of the 270,338 students enrolled in the districts surveyed were suspended at least once during the 1972-1973 school year: 2.4 percent of the white students and 6.2 percent of the black students. Although over 60 percent of the students enrolled in the 147 districts surveyed were white, over 60 percent of the total students suspended were black. The 10,343 students who were suspended from the 146 surveyed districts reporting data on suspension days were suspended for over 49,500 days. Students in these Arkansas districts missed over 280 school years due to suspensions during the 1972-1973 school year.

Eighty nine percent of the secondary schools serving these 147 districts reported suspending students during the 1972-1973 school year. In the Fort Smith School District, almost 4.7 percent of the total secondary enrollment was suspended, whereas 2.3 percent of the total enrollment of that school district was suspended. The Pulaski County District suspended 4.5 percent of its total enrollment, but 9.1 percent of the secondary school students in the Pulaski district were suspended at least once during the 1972-1973 school year.

MARYLAND

(31,699 Students Suspended)

Almost 90 percent of the approximately 921 thousand pupils enrolled in public schools in Maryland in fall, 1972 were enrolled in the 18 districts surveyed by OCR in its Fall 1973 Survey. 3.9 percent of the total enrollment in the 18 districts was suspended at least once during the 1972-1973 school year, and in over 60 percent of the districts the percent of students suspended exceeded five percent. In the 17 districts which reported suspensions by race (the Baltimore City School District provided no racial statistics on suspensions), 3.9 percent of the total white students enrolled and 9.3 percent of the total black students enrolled were suspended. In the 17 districts reporting both the number of students suspended at least once and the total number of suspension days, more than 31,000 students were suspended for over 165 thousand days during the 1972-1973 school year.

In the 18 Maryland districts surveyed, over 93 percent of the secondary schools reported at least one student suspended. In the Prince Georges County School District, where 90 percent of the 10,333 students suspended were enrolled in secondary schools, 13.4 percent of the students in secondary schools were suspended compared to 6.4 percent of the district's total enrollment. In the Wicomico County School District, 12.7 percent of the secondary enrollment and 5.9 percent of the total enrollment was suspended.

These figures in fact understate the severity of the suspension problem in Maryland. The Baltimore City School District, which is over 69 percent black, reported the lowest percentage of suspensions (.9) of the eighteen Maryland districts surveyed by OCR. However, Baltimore City reported to OCR only those students who had been suspended for ten days or more. No student given a "disciplinary removal" or any other form of suspension for less than 10 days was included in these figures. Thus, the Baltimore data

is an undercount by itself, and sharply understates the aggregate percentage of suspensions in the eighteen districts surveyed.

NEW JERSEY

(36,732 Students Suspended)

Over 38 percent of the estimated 1.5 million pupils enrolled in New Jersey public schools in fall, 1972 were enrolled in the 102 school districts included in the OCR survey of fall, 1973. Ninety-five percent of the districts reported suspending students in the 1972-73 school year. Six percent of the total enrollment in these districts was suspended at least once during the 1972-73 school year; at least five percent of the white enrollment, seven percent of the black enrollment, and 3.4 percent of the Spanish-surnamed American enrollment. In forty-three of the districts, the percent of the total enrollment suspended exceeded the aggregate figure of 6.4 percent, and in over half of these more than 10 percent of the total enrollment was suspended. The 36,000 pupils suspended in the 99 districts reporting both the number of students suspended at least once and the total number of suspension days were suspended for over 158 thousand days.

Suspensions from secondary school show the severity of the suspension problem even more clearly. Over 90 percent of the secondary schools in the 100 districts reporting to OCR recorded at least one student suspended during the 1972-73 school year. In the Elizabeth School District, while 6.4 percent of the total enrollment in the district was suspended at least once, 13.8 percent of the students enrolled in the district's secondary schools were suspended. In Atlantic City, 7.2 percent of the secondary enrollment and 3.7 percent of the total enrollment was suspended.

OHIO

(36,602 Students Suspended)

Over 30 percent of the approximately 2.4 million pupils enrolled in Ohio public schools in the fall of 1972 were enrolled in the 47 districts surveyed by OCR in fall, 1973. The Columbus School District was the only district surveyed that reported it had no information available regarding suspensions. All but two of the remaining 46 districts reported at least one student suspended. 5.3 percent of the total pupils enrolled in these 46 districts in the fall of 1972 were suspended at least once; 8.0 percent of the total black enrollment and 3.7 percent of the white enrollment. Eight of the districts reported suspending over five percent of their white enrollment, while 31 districts reported suspending over five percent of their black students. A total of 36,602 pupils were suspended in the surveyed districts for a total of over 203 thousand days. Around the state, students missed at least 1,000 school years due to suspensions.

While these figures are striking, we know that the majority of suspensions occur at the junior and senior high school levels and thus that the percentages of secondary students suspended are even more striking. Over 90 percent of the 240 secondary schools in the districts surveyed reported suspending students. In the Dayton School District, where 6.5 percent of the total enrollment was suspended at least once during the 1972-73 school year, 15.7 percent of the secondary school students were suspended. In Toledo, 4.7 percent of the total enrollment was suspended at least once and 9.5 percent of the secondary enrollment.

SOUTH CAROLINA

(38,959 Students Suspended)

All of the 93 school districts in South Carolina were surveyed by OCR in the fall of 1973. Of the 630 thousand students enrolled in the 91 South Carolina districts for which suspension data were available, 6.2 percent were suspended

during the 1972-73 school year; 4.7 percent of the total white enrollment and 8.3 percent of the total black enrollment. In one third of the districts, the percent of total students suspended exceeded 6.2 percent. The percentage of the black enrollment that was suspended exceeded the percentage of the white enrollment that was suspended in over 80 percent of the districts reviewed. Whereas two thirds of the districts reviewed reported suspending over five percent of their black st udents, less than one third reported suspending that percentage of their white students.

The percentages referred to above reflect the percent of the total enrollment suspended at least once rather than the percent of the secondary enrollment suspended. Because the great majority of suspensions occur in junior and senior high schools, these figures actually understate the extent to which suspensions are being used.

TABLE I

ARKANSAS

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]				Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	Total	W	B	SSA	O	T	W	B	SSA
Atkinson	1,084	172	885	7		2 (2)	1 (1)	1 (1)	35 (252)	6 (26)	49 (223)	1 (1)		5.3	3.4	5.5	14.3
Arkadelphia	2,874	1,457	716		1	6 (2)	4	2	48 (127.5)	26 (71.5)	20 (56)			1.9	1.6	2.6	
Arkansas City	104	40	64			2 (2)	2										
Armorel	340	208	135	5		(0)		1									
Ashdown	1,997	1,321	671			4 (2)	2	2	31 (117)	19 (73)	12 (44)			1.6	1.4	1.8	
Augusta	1,154	623	527		4	3 (3)	2 (1)	(1)	28 (121)	8 (28)	20 (93)			2.4	1.3	3.8	
Barton-Lexa	880	370	520			3 (1)	2	1	32 (298)	24 (146)	28 (152)			5.8	6.5	5.4	
Bearden	638	378	258			2 (0)	1	1									
Bentonville	248	219	29			(0)		1									
Berlin	4,030	3,774	253	3		7 (5)	4 (2)	3	168 (479)	130 (360)	36 (119)			4.1	3.4	14.2	
Bevins	490	254	196			2 (1)	(1)	2 (1)	17 (70)	4 (13.5)	13 (56.5)			3.8	1.6	6.6	
Blytheville	5,233	2,871	2,335	14	8	11 (6)	6 (5)	5 (1)	230 (1,341)	88 (237)	142 (1,104)			4.4	2.4	6.9	
Bradley	529	208	471			2 (1)	1	1	8 (178)		8 (178)			1.3		1.9	
Bright Star	296	212	84			(1)		(1)	5 (15)	4 (12)	(3)			1.7	1.9	1.2	
Brinkley	2,607	1,665	942			3 (3)	2 (2)	1 (1)	35 (228)	8 (38)	27 (190)			1.7	.9	2.9	
Camden	2,538	1,170	1,368			5 (5)	3 (3)	2 (2)	77 (356)	29 (127)	48 (229)			3.0	2.5	3.5	
Caraway	868	740	128			2 (1)	(1)	2 (1)	5 (25)	4 (20)	(5)			.6	.5	.8	
Carthage	269	70	199			(1)	(1)	(1)	10 (100)	5 (50)	5 (50)			3.7	7.1	2.5	
Chidester	288	44	244			(1)	(1)	(1)	7 (30)	3 (20)	4 (10)			10.4		12.3	
Clarendon	885	563	312			5 (5)	2 (2)	3 (3)	7 (70)	4 (20)	3 (50)			.8	.7	1.0	
Collins	45	39	6			(0)		1									

TABLE I

ARKANSAS

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Conway	3,512	2,963	547			2	6 (3)	4 (1)	2 (2)	24 (101)	18 (71)	6 (30)			.7	.6	1.1	
Corning	1,538	1,538					4 (0)	3	1									
Cotton Plant	586	72	514				2 (2)	1 (1)	1 (1)	16 (48)	2 (6)	14 (42)			2.7	2.8	2.7	
Crawfordsville	987	87	900				2 (1)	1	1[6] (1)	13 (39)	1 (3)	12 (36)			1.3	1.1	1.3	
Cross County	1,035	878	156			1	4 (1)	3	1 (1)	10 (30)	6 (18)	4 (12)			1.0	.7	2.6	
Crossett	3,198	2,379	819				7 (4)	5 (2)	2 (2)	61 (496)	22 (187)	39 (309)			1.9	.9	4.8	
DeValls Bluff	579	389	190				1 (1)		1 (1)	11 (33)	5 (15)	6 (18)			1.9	1.3	3.2	
DeWitt	1,635	1,374	261				4 (2)	3 (1)	1 (1)	27 (81)	15 (45)	12 (36)			1.7	1.1	4.6	
Delta Special	803	421	382				3 (2)	2 (1)	1 (1)	4 (49)		4 (49)			.5		1.0	
Dermott	1,404	382	1,007			15	2 (1)	1	1 (1)	13 (43)	3 (14)	10 (29)			.9	.8	1.0	
Desha County	102	14	85	3			2 (0)	2										
Desha-Drew	401	84	317				2 (1)	1	1 (1)	5 (15)		5 (15)			1.2		1.6	
Dollarway	2,717	1,133	1,584				5 (2)	3	2 (2)	83 (245)	8 (24)	75 (221)			3.1	.7	4.7	
Drew Central	715	500	214			1	1 (1)		1 (1)	23 (80)	11 (44)	12 (36)			3.2	2.2	5.6	
Dumas	2,542	1,059	1,483				4 (2)	3 (1)	1 (1)	77 (402)	22 (116)	55 (286)			3.0	2.1	3.7	
Earle	1,408	373	1,031	4		1	4 (4)	2 (2)	2 (2)	212 (1,544)	31 (250)	181 (1,294)			15.0	8.3	17.6	
El Dorado	5,898	3,600	2,298				14 (5)	10 (1)	4 (4)	660 (2,701)	247 (863)	413 (1,838)			11.2	6.9	18.0	
Elaine	1,141	323	781	34		3	3 (2)	1 (1)	2 (1)	30 (106)	11 (33)	17 (67)	2 (6)		2.6	3.4	2.2	5.9
Emerson	441	223	218				1 (1)		1 (1)	10 (19)	4 (7)	6 (12)			2.3	1.8	2.8	
Emmet	158	112	46				2 (2)	1 (1)	1 (1)	6 (24)	2 (6)	4 (18)			3.8	1.8	8.7	
England	1,245	694	551				2 (1)	1	1 (1)	65 (195)	25 (75)	40 (120)			5.2	3.6	7.3	
Eudora	1,591	453	1,124	8		6	4 (2)	2	2 (2)	22 (93)	10 (44)	12 (49)			1.4	2.2	1.1	
Fairview	1,987	1,416	571				1 (1)		1 (1)	27 (82)	17 (57.5)	10 (24.5)			1.4	1.2	1.8	
Fordyce	1,446	824	619	3			4 (3)	3 (2)	1 (1)	40 (192)	6 (18)	34 (174)			2.8	.7	5.5	
Foreman	738	507	223	8			3 (1)	1	2 (1)	2 (2)	1 (1)	1 (1)			.3	.2	.4	
Forrest City	5,836	2,360	3,445	15	2	5	12 (6)	10 (4)	2 (2)	531 (3,302)	208 (1,121)	323 (2,181)			8.1	8.9	9.4	
Fort Smith	12,962	11,742	1,144	31	29[7]	16	26 (9)	20 (4)	6 (5)	299 (1,665)	199 (931)	94 (716)		6 (18)	2.3	1.7	8.2	
Garland	179	52	127				1 (0)		1									
Gillett	445	368	77				1 (1)		1 (1)	4 (12)	3 (9)	1 (3)			.9	.8	1.3	
Glendale	300	187	113				1 (1)		1 (1)	1 (1)	1 (1)				.3	.5		
Gould	541	123	418				2 (2)	1 (1)	1 (1)	12 (267)	2 (14)	10 (253)			2.2	1.6	2.4	
Grady	682	184	498				2 (1)	1	1 (1)	4 (12)	1 (3)	3 (9)			.6	.5	.6	
Gurdon	1,040	678	362				3 (2)	2 (1)	1 (1)	19 (57)	13 (39)	6 (18)			1.8	1.9	1.7	
Guy Perkins	289	167	122				1 (1)		1 (1)	2 (6)	2 (6)				.7	1.2		
Hamburg	1,336	909	427				5 (2)	4 (1)	1 (1)	69 (210)	36 (108)	33 (102)			5.2	4.0	7.7	
Hampton	952	610	340			2	2 (1)	1	1 (1)	18 (56)	6 (23)	12 (33)			1.9	1.0	3.5	
Harmony Grove Sch. Dist. #1	666	453	213				1 (1)		1[7] (1)	35 (124)	20 (69)	15 (55)			5.3	4.4	7.0	
Hazen	710	561	149				2 (1)	1	1 (1)	28 (155)	20 (115)	8 (40)			3.9	3.6	5.4	
Helena—West Helena	6,003	2,090	3,886	10	2	15	10 (4)	8 (2)	2[6] (2)	274 (1,742)	67 (483)	206 (1,256)	1 (3)		4.6	3.2	5.3	10.0
Hermitage	748	433	315				3 (0)	2	1									
Holly Grove	887	180	707				3 (3)	2 (2)	1 (1)	34 (104)	7 (23)	27 (81)			3.8	3.9	3.8	
Hope	2,899	1,849	1,050				8 (2)	6	2 (2)	67 (198)	25 (70)	42 (128)			2.3	1.4	4.0	
Hot Springs	5,780	4,362	1,409	5	1	3	12 (10)	9 (7)	3 (3)	378 (1,574)	173 (700)	204 (869)	1 (5)		6.5	4.0	14.5	20.0
Hughes	1,840	509	1,311	12		8	2 (1)	1	1 (1)	32 (160)	6 (30)	26 (130)			1.7	1.2	2.0	
Hunnoke	362	193	169				2 (2)	1 (1)	1 (1)	7 (24)	2 (6)	5 (18)			1.9	1.0	3.0	
Humphrey	365	204	161				2 (2)	1 (1)	1 (1)	11 (367)	3 (124)	8 (243)			3.0	1.5	5.0	
Huttig	296	166	130				1 (1)		1 (1)	12 (12)	6 (6)	6 (6)			4.1	3.6	4.6	
Junction City	1,007	573	434				2 (2)	1 (1)	1 (1)	23 (95)	7 (29)	16 (66)			2.3	1.2	3.7	

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ARKANSAS

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	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Kingsland	222	153	65			4	1 (1)		1 (1)	3 (86)	2 (6)	1 (60)			1.4	1.3	1.5	
Lake Village	1,689	586	1,087	7		9	4 (3)	2 (1)	2 (2)	102 (366)	19 (60)	82 (303)	1 (3)		6.0	3.2	7.5	14.3
Lakeside	1,890[6]	1,880		7	2	1	3 (1)	2 (1)	1	6[10]	6				.3	.3		
Lawson	35	18	17				1 (0)	1 (0)										
Lepanto	801	672	117	12			1 (1)		1 (1)	2 (26)	1 (14)	1 (14)			.2	.1	.9	
Lewisville	771	343	428				3 (0)	2	1									
Linwood	364	19	345				2 (1)	1	1 (1)	1 (53)		1 (53)			.3		.3	
Little Rock	22,348	11,721	10,362	28	25	12	39 (35)	31 (27)	8 (8)	1,474 (9,327)	309 (1,694)	1,165 (7,633)			6.3	2.6	11.2	
Lockesburg	461	379	82				1 (1)		1 (1)	2 (3)	1 (2)	1 (1)			.4	.3	1.2	
Lonoke	1,707	1,128	579				3 (1)	2 (1)	1	9 (27)	2 (9)	7 (18)			.5	.2	1.2	
Luxora	777	384	386	7			2 (2)	1 (1)	1 (1)	21 (116)	8 (36)	13 (80)			2.7	2.1	3.4	
Magnolia	3,071	2,010	1,061				3 (2)	2 (1)	1 (1)	113 (412)	55 (170)	58 (242)			3.7	2.7	5.5	
Malvern	3,044	2,279	765				7 (3)	5 (1)	2 (2)	126 (464)	92 (338)	34 (126)			4.1	4.0	4.4	
Marianna	4,763	1,136	3,608	10	1	8	10 (5)	6 (1)	4 (4)	249 (1,200)	35 (183)	214 (1,017)			5.2	3.1	5.9	
Marion	1,987	1,040	944	3			5 (3)	3 (1)	2 (2)	40 (126)	11 (44)	29 (82)			2.0	1.1	3.1	
Marked Tree	1,387	1,056	331				3 (2)	2 (1)	1 (1)	79 (377)	44 (207)	35 (170)			5.7	4.2	10.6	
Marvell	1,749	359	1,390				4 (4)	2 (2)	2 (2)	92 (922)	22 (197)	70 (725)			5.3	6.1	5.0	
McCrory	965	742	223				3 (1)	2	1 (1)	4 (6)	2 (3)	2 (3)			.4	.3	.9	
McGehee	1,460	733	727				2 (1)	1	1 (1)	3 (30)	1 (10)	2 (20)			.2	.1	.3	
McNeil	417	139	278				2 (0)	1	1									
Mineral Springs	470	238	232				1 (1)		1 (1)	8 (66)	4 (33)	4 (33)			1.7	1.7	1.7	
Monticello	1,909	1,261	648				4 (3)	2 (1)	2 (2)	65 (321)	34 (180)	31 (141)			3.4	2.7	4.8	
Morrilton	2,368	2,068	298		2		5 (2)	3	2 (2)	61 (308)	53 (255)	8 (53)			2.6	2.6	2.7	
Mount Holly	313	151	162				1 (1)		1 (1)	4 (20)	1 (5)	3 (15)			1.3	.7	1.9	
Nashville	1,569	1,195	373	1			3 (2)	1	2 (2)	13 (65)	6 (30)	7 (35)			.8	.5	1.9	
New Edinburg	275	176	99				1 (0)		1									
Newport	2,967	2,217	750				5 (1)	3	2 (1)	13 (39)	10 (30)	3 (9)			.4	.5	.4	
Norphlet	636	443	193				1 (1)		1 (1)	7 (35)	5 (25)	2 (10)			1.1	1.1	1.0	
North Little Rock	12,171	9,249	2,893	14	2	13	28 (7)	21	7 (7)	621 (2,113)	328 (1,149)	293 (964)			5.1	3.5	10.1	
Oklahoma	184	18	166				1 (1)		1 (1)	1 (10)		1 (10)			.5		.6	
Osceola	2,352	1,200	1,144	8			5 (4)	3 (2)	2 (2)	58 (407)	13 (91)	45 (316)			2.5	1.1	3.9	
Palestine	744	453	291				2 (2)	1 (1)	1 (1)	9 (102)	5 (28)	4 (74)			1.2	1.1	1.4	
Parkdale	175	8	167				2 (0)	2										
Parkers Chapel	292	252	40				1 (0)		1									
Parkin	1,113	405	695	13			3 (1)	2	1 (1)	14 (42)	6 (18)	8 (24)			1.3	1.5	1.2	
Patmos	54	32	22				1 (0)	1										
Phillips County	472		472				2 (1)	1	1 (1)	3 (6)		3 (6)			.6		.6	
Pine Bluff	8,490	4,526	3,912	10	2	9	18 (9)	13 (4)	5 (5)	181 (966)	51 (294)	130 (672)			2.1	1.1	3.3	
Plum Bayou—Tucker	296	42	254				1 (1)		1 (1)	6 (30)	2 (10)	4 (20)			2.0	4.8	1.6	
Portland	416	112	304				1 (1)		1 (1)	1 (3)		1 (3)			.2		.3	
Prescott	1,368	808	550	6		4	3 (2)	2 (1)	1 (1)	27 (48)	8 (16)	19 (32)			2.0	1.0	3.5	
Pulaski County	27,211	22,088	4,985	86	15	37	40 (27)	27 (14)	13 (13)	1,226 (3,697)	659 (1,709)	567 (1,988)			4.5	3.0	11.4	
Rison	683	500	183				1 (1)		1 (1)	5 (10)	3 (6)	2 (4)			.7	.6	1.1	
Ross Van Ness	108	78	30				1 (0)	1										
Russellville	3,827	3,685	122	2	14	4	8 (3)	6 (1)	2 (2)	78 (300)	69 (264)	9 (36)			2.0	1.9	7.4	
Saint Charles	279	171	108				1 (1)		1 (1)	3 (9)	1 (3)	2 (6)			1.1	.6	1.9	
Saratoga	339	116	223				1 (1)		1 (1)	5 (25)	2 (10)	3 (15)			1.5	1.7	1.3	
Sherrill	257	39	214	4			2 (0)	2										

TABLE I

ARKANSAS

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Smackover	848	550	298				3 (2)	2 (1)	1 (1)	17 (79)	7 (22)	10 (57)			2.0	1.3	3.4	
South Mississippi	2,422	1,433	987			2	6 (1)	4	2 (1)	69 (58)	39 (32)	30 (26)			2.8	2.7	3.0	
Sparkman	542	272	270				1 (1)		1 (1)	21 (40)		21 (40)			3.9		7.8	
Stamps	967	472	495				3 (2)	2 (1)	1 (1)	39 (133)	14 (50)	25 (83)			4.0	3.0	5.1	
Star	1,238	934	304				3 (2)	2 (1)	1 (1)	2 (37)	1 (35)	1 (2)			.2	.1	.3	
Stephens	600	231	377				2 (0)	1	1									
Strong	737	225	512				3 (2)	2 (1)	1 (1)	14 (33)	7 (18)	7 (15)			1.9	3.1	1.4	
Stuttgart	2,621	1,643	978				6 (2)	5 (1)	1 (1)	80 (196)	23 (45)	57 (151)			3.1	1.4	5.8	
Taylor	423	267	156				1 (1)		1 (1)	5 (10)	2 (4)	3 (6)			1.2	.7	1.9	
Texarkana	6,545	4,334	2,196	4	7	4	10 (5)	7 (2)	3 (3)	199 (881)	66 (207)	133 (674)			3.0	1.5	6.1	
Thornton	414	180	234				2 (0)	1	1									
Tuckerman	820	711	109				1 (1)		1 (1)	5 (109)	4 (40)	1 (69)			.6	.6	.9	
Turrell	920	247	668	5			2 (1)	1	1 (1)	22 (55)	7 (21)	15 (34)			2.4	2.8	2.2	
Tyronza	307	235	72				1 (0)		1									
Union County	256	178	78				1 (0)		1									
Urbana	84	9	75				1 (0)	1										
Village	192	102	90				1 (1)		1 (1)	4 (30)	3 (27)	1 (3)			2.1	2.9	1.1	
Webbaseka	490	16	469	5			2 (1)	1	1 (1)	5 (17)		5 (17)			1.0		1.1	
Waldo	691	276	415				3 (2)	1	2 (2)	15 (45)		15 (45)			2.2		3.6	
Warren	2,032	1,232	800				5 (4)	2 (1)	3 (3)	30 (275)	10 (30)	20 (245)			1.5	.8	2.5	
Washington	301		301				3 (1)	2	1 (1)	5 (15)		5 (15)			1.7		1.7	
Watson Chapel	3,309	1,573	1,736				5 (2)	4 (1)	1 (1)	234 (1,204)	69 (252)	165 (952)			7.1	4.4	9.5	
West Memphis	7,045	3,333	3,712				13 (12)	8 (7)	5 (5)	687 (3,377)	219 (990)	468 (2,387)			9.8	6.6	12.6	
Wheatley	480	206	274				1 (1)		1 (1)	21 (63)	6 (18)	15 (45)			4.4	2.9	5.5	
Williford	295	295					2 (2)	1 (1)	1 (1)	4 (39)	4 (39)				1.4	1.4		
Willisville	80		6	74			1 (0)		1									
Wilmar	367	126	241				2 (1)	1	1 (1)	6 (18)	1 (3)	5 (15)			1.6	.8	2.1	
Wilmot	479	81	393	5			2 (2)	1 (1)	1 (1)	13 (46)	1 (3)	12 (43)			2.7	1.2	3.1	
Wonderview	348	306	42				1 (0)		1									
Wynne	2,978	1,962	1,016				4 (2)	3 (1)	1 (1)	13 (34)	8 (22)	5 (12)			.4	.4	.5	
TOTAL (147 Districts)	270,338	168,716	102,843	473	108	198	587 (325)	370 (131)	217 (194)	10,349 (49,509.5) [11]	3,974 (16,016.5)	6,363 (33,515)	6 (20)	6 (18)	3.8	2.4	6.2	1.3

TABLE II

MARYLAND

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Anne Arundel Co.	77,083	66,881	9,713	182	93	214	97 (67)	78 (48)	19 (19)	2,801 (12,499)	2,031 (8,361)	754 (4,090)	12 (36)	4 (12)	3.6	3.0	7.8	6.6
Baltimore City	189,600	57,350	129,250				218 (143)	163 (96)	55 (48)	1,683[10] (64,183)					.9			
Baltimore Co.	131,987	125,677	5,604	260	51	395	175 (118)	132 (78)	43 (40)	6,945[11] (18,515.5)	6,386 (16,894.5)	403 (1,372)	10 (25)	6 (14)	5.3	5.1	7.2	3.8
Calvert Co.	6,287	3,125	3,161	1			15 (7)	13 (6)	2 (1)	416 (2,286)	165 (1,098)	253 (1,188)			6.6	5.3	8.0	
Caroline Co.	5,344	4,010	1,313	14	4	3	10 (8)	6 (4)	4 (4)	383 (962)	237 (628)	125 (331)	1 (3)		6.8	5.9	9.5	7.1
Charles Co.	15,681	10,036	5,592	9	9	35	27 (17)	23 (13)	4 (4)	1,048 (3,400)	429 (1,391)	618 (2,007)		1 (2)	6.7	4.3	11.1	
Dorchester Co.	6,373	3,745	2,618	4		6	22 (10)	17 (5)	5 (5)	567 (2,626)	194 (883)	373 (1,743)			8.9	5.2	14.2	
Harford Co.	32,418	29,062	2,994	159	58	145	39 (9)	32 (4)	7 (5)	1,470 (3,129)	1,325 (2,710)	143 (413)	2 (6)		4.5	4.6	4.8	1.3
Howard Co.	20,429	17,915	2,305	70	13	125	35 (21)	28 (15)	7 (6)	700[14] (1,685)	548 (1,329)	117 (241)	5 (8)	1 (1)	3.4	3.1	5.1	7.1
Kent Co.	3,680	2,647	1,233				9 (8)	8 (7)	1 (1)	208 (740)	99 (322)	110 (418)			5.4	3.7	8.9	
Montgomery Co.	126,707	113,795	8,131	2,690	194	897	107 (75)	147 (28)	50 (47)	1,974 (4,446.5)	1,606 (3,568.5)	329 (799)	32 (63)	7 (16)	1.6	1.4	4.0	1.2
Prince Georges Co.	161,969	119,033	40,397	1,137	191	1,211	235 (201)	176 (142)	59 (59)	10,333 (40,889)	5,842 (23,032)	4,438 (17,890)	38 (113)	15 (54)	6.4	4.9	11.0	3.3
Queen Annes Co.	4,717	3,386	1,330	1			11 (4)	9 (2)	2 (2)	123 (290)	57 (149)	66 (141)			2.6	1.7	5.0	
Saint Marys Co.	11,792	8,446	3,249	21	23	53	23 (9)	20 (7)	3 (2)	934 (4,841)	577 (2,976)	354 (1,854)	2 (8)	1 (3)	7.9	6.8	10.9	9.5
Somerset Co.	4,508	2,342	2,151	10		5	17 (12)	14 (9)	3 (3)	487[15] (1,416.5)	238 (665)	231 (697.5)			10.8	10.2	10.7	
Talbot Co.	4,983	3,361	1,622				12 (9)	10 (7)	2 (2)	224 (1,016)	116 (552)	108 (464)			4.5	3.5	6.7	
Wicomico Co.	14,371	10,087	4,278	2		4	27 (14)	20 (7)	7 (7)	842 (2,184)	438 (1,016.5)	404 (1,167.5)			5.9	4.3	9.4	
Worcester Co.	6,589	3,725	2,859		1	4	14 (8)	10 (4)	4 (4)	578[16]	239	339			8.8	6.4	11.9	
TOTAL (18 Districts)	821,718	584,623	227,801	4,560	637	4,097	1,183 (740)	908 (481)	277 (259)	31,699[17] (165,108.5)	20,527 (85,575.5)	9,165 (34,616)	102 (262)	35 (102)	3.	3.9[18]	9.3[18]	2.2

TABLE III

NEW JERSEY

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Asbury Park	3,515[19]	932	2,345	232		6	5 (5)	4 (4)	1 (1)	715[20] (1,952)	30 (93)	200 (407)	18 (51)		20.3[21]	3.2	8.5	7.8
Atlantic City	8,831	2,284	5,981	544	11	11	14 (8)	11 (3)	3 (3)	331 (2,040)	84 (523)	234 (1,437)	10 (66)	3 (14)	3.7	3.7	3.9	1.8
Bayonne	9,202	7,802	899	453	11	37	1-4 (1)	1-1 (1)	3	1 (1)	1 (1)				.01	.01		
Belmar	765	554	198	13			1 (1)	1 (1)		5 (15)	1 (3)	4 (12)			.7	.2	2.0	
Bradley Beach	539	460	6	67	4	2	1 (1)	1 (1)		39 (101)	30 (75)	2 (5)	7 (21)		7.2	6.5	33.3	10.4
Bridgeton	6,569	3,682	2,664	165	17	41	12 (10)	10 (8)	2 (2)	2,150[22] (7,379)	665 (2,242)	478 (2,068)	16 (73)	4 (15)	32.7[23]	18.1	17.9	9.7
Buena Regional	1,888	1,295	368	223			7 (5)	6 (5)	1	234 (708)	151 (469)	64 (183)	19 (56)		12.4	11.7	17.4	8.5
Burlington Co. Voc. Tech.	1,011	904	77	18	5	7	1 (1)		1 (1)	61 (125)	57 (116)	4 (9)			6.0	6.3	5.2	
Camden City	20,927	4,623	12,760	3,509	3	12	33 (23)	29 (20)	4 (3)	1,276 (12,364)	216 (2,193)	845 (7,874)	214 (2,292)	1 (5)	6.1	4.7	6.6	6.1
Cape May City	309	236	66	1		6	1 (1)	1 (1)		2 (6)	1 (3)	1 (3)			.6	.4	1.5	
Cape May Co. Voc. Tech.	389	344	45				1 (0)		1									
Carteret	4,547	3,943	278	320	1	5	7 (3)	6 (2)	1 (1)	210 (661.5)	153 (448)	48 (183.5)	9 (30)		4.6	3.9	17.3	2.8
Cedar Grove Township	2,643	2,565	42	9		27	6 (2)	5 (1)	1 (1)	43 (220)	41 (212)	1 (5)	1 (3)		1.6	1.6	2.4	11.1
Deptford Township	5,670	4,978	651	26	1	14	13 (5)	12 (4)	1 (1)	672 (2,289.5)	591 (1,954.5)	81 (335)			11.9	11.9	12.4	
Dover Town	3,608	2,590	249	744	4	21	5 (5)	4 (4)	1 (1)	98 (246)	53 (148)	17 (41)	28 (57)		2.7	2.0	6.8	3.8
Downe Township	358	260	86	10		2	2 (1)	2 (1)		97[24]					27.1			
East Greenwich Township	427	380	34	12		1	3 (0)	3										
East Orange	11,738	852	10,716	119	8	43	14 (8)	11 (5)	3 (3)	1,392 (3,654)	119 (256)	1,260 (3,370)	13 (26)		11.9	14.0	11.8	10.9
Estontown	2,415	1,930	357	61	2	65	5 (2)	5 (2)		10 (26)	8 (22)	2 (4)			.4	.4	.6	
Egg Harbor Township	2,292	1,979	289	15	3	6	10 (6)	10 (6)		83 (502)	62 (328)	21 (174)			3.6	3.1	7.3	
Elizabeth	15,783	7,039	5,554	3,133	3	54	25 (16)	18 (9)	7 (7)	1,017 (8,735)	317 (1,863)	527 (3,685)	173 (1,187)		6.4	4.5	9.5	5.5

TABLE III

NEW JERSEY

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Englewood	4,195	1,850	2,202	120	2	21	7 (2)	6 (1)	1 (1)	118 (439)	9 (29)	109 (410)			2.8	.5	5.0	
Essex Co. Voc.	2,074	842	1,021	208		3	4 (2)		4 (2)	141 (341)	7 (13)	104 (254)	30 (74)		6.8	.8	10.2	14.4
Ewing Township	5,489	4,389	1,065	17	9	9	10 (8)	8 (6)	2 (2)	1,085[26] (3,004)	711 (1,899)	373 (1,104)			19.8	16.2	35.0	
Fairfield Borough	1,033[25]	1,019	2	11		1	2 (1)	2 (1)		3 (0)	3 (0)				.3	.3		
Fairfield Township	1,114[24]	318	765	25		6	2 (1)	2 (1)		211 (389)	58 (102)	153 (287)			18.9	18.2	20.0	
Florence Township	1,638	1,453	181			4	4 (3)	3 (2)	1 (1)	90 (138)	89 (136)	1 (2)			5.5	6.1	.6	
Franklin Township (Gloucester Co.)	1,299	1,102	156	31		10	6 (0)	6										
Franklin Township (Somerset Co.)	6,811	4,991	1,678	82	2	60	11 (4)	9 (2)	2 (2)	245 (1,015)	107 (333)	132 (644)	6 (38)		3.6	2.1	7.9	7.3
Freehold Borough	1,459	925	495	37		2	6 (4)	6 (4)		105 (99.5)	39 (35)	64 (62.5)	1 (1)	1 (1)	7.2	4.2	12.9	2.7
Glassboro	2,713	2,080	607	20		6	6 (3)	4 (1)	2 (2)	404 (1,208)	277 (723)	123 (474)	3 (8)	1 (3)	14.9	13.3	20.3	15.0
Greater Egg Harbor Regional	2,602	2,176	347	79			2 (2)		2 (2)	352 (509)	254 (431)	83 (144)	15 (34)		13.5	11.7	23.9	19.0
Guttenberg	566	484		82			1 (0)	1										
Hackensack	6,111	4,165	1,549	373	2	22	7 (4)	6 (3)	1 (1)	201 (531)	64 (190)	133 (331)	4 (10)		3.3	1.5	8.6	1.1
Hamilton Township (Atlantic Co.)	1,209	898	261	46	3	1	2 (2)	2 (2)		58 (225)	35 (135)	22 (87)	1 (3)		4.8	3.9	8.4	2.2
Harrison	1,845	1,598		245		2	3 (1)	2	1 (1)	6 (18)	5 (15)		1 (3)		.3	.3		.4
Highland Park	2,437	2,133	258	32	1	13	5 (2)	4 (1)	1 (1)	105 (310)	79 (229)	24 (78)	2 (3)		4.3	3.7	9.3	6.3
Hillside	3,754	3,014	630	83		27	6 5	5 4	1 (1)	371[27] (2,004)	276 (1,528)	75 (410)	11 (46)		9.9	9.2	11.9	13.3
Hoboken	7,829	2,899	476	4,443	6	5	8 1	6	2 1	14 (70)	8 (40)	2 (10)	4 (20)		.2	.3	.4	.1
Irvington	7,921	5,540	1,827	526	5	23	10 (8)	8 (6)	2 (2)	312 (1,797)	140 (757)	154 (956)	18 (84)		3.9	2.5	8.4	3.4
Jamesburg	1,164	1,018	146				3 (3)	2 (2)	1 (1)	12 (35)	8 (25)	4 (10)			1.0	.8	2.7	
Jersey City	38,616	13,912	17,548	6,906	22	228	37 (31)	33 (27)	4 (4)	653[28] (7,949)	122 (1,542)	303 (4,320)	69 (802)	1 (12)	1.7[28]	.9	1.7	1.0
Keyport	1,977	1,691	150	122	1	13	4 (2)	3 (1)	1 (1)	210 (1,038)	169 (763)	) 21 (120)	20 (155)		10.6	10.0	14.0	16.4
Lakewood	5,077	3,038	1,480	540	6	13	6 (3)	5 (2)	1 (1)	329 (1,619)	93 (381)	195 (1,047)	41 (191)		6.5	3.1	13.2	7.6
Lambertville	397	348	41	6	1		1 (1)	1 (1)		2 (6)	1 (3)	1 (3)			.5	.3	2.4	
Lawnside	496	1	496	1			1 (1)	1 (1)		75 (75)		75 (75)			15.1		15.1	
Lawrence Township (Cumberland Co.)	590	285	209	6			1 (1)	1 (1)		86 (734)	38 (295)	47 (431)	1 (8)		17.2	13.3	22.5	16.7
Lawrence Township (Mercer Co.)	3,502	3,075	391	13	1	22	7 (3)	5 (1)	2 (2)	127 (235)	94 (171)	31 (54)	2 (10)		3.6	3.1	7.9	15.4
Linden	6,998	4,993	1,772	213		20	15 (7)	12 (4)	3 (3)	691 (2,473)	427 (1,328)	248 (1,098)	16 (49)		9.9	8.6	14.0	7.5
Long Branch	5,562	3,265	1,692	569	2	34	10 (10)	8 (8)	2 (2)	768 (3,033)	305 (1,198)	395 (1,566)	68 (269)		13.8	9.3	23.3	12.0
Lower Camden Co. Regional	4,269	3,561	644	44	17	3	4 (4)		4 (4)	1,014 (3,729)	813 (3,151)	188 (523)	13 (55)		23.8	22.8	29.2	29.5
Magnolia	752	637	103	8		4	1 (1)	1 (1)		19 (84)	18 (78)	1 (6)			2.5	2.8	1.0	
Matawan Regional	6,756	5,949	718	67	4	18	8 (6)	7 (5)	1 (1)	553 (2,215)	380 (1,521)	172 (691)	1 (3)		8.2	6.4	24.0	1.5
Metuchen	3,265	2,922	279	47		17	5 (1)	4 (1)	1	3 (8)	1 (3)	2 (5)			.1	.03	.7	
Middle Township	2,458	1,978	512	14		4	5 (4)	4 (3)	1 (1)	325 (698)	218 (458)	103 (228)	3 (12)	1 (2)	13.2	11.3	20.1	21.4
Millville	5,851	5,198	469	173	6	5	8 (5)	6 (3)	2 (2)	555 (2,163)	375 (1,457)	171 (673)	9 (33)		9.5	7.2	30.5	5.2
Monmouth Regional	1,438	1,120	284	19		15	1 (1)		1 (1)	230 (876)	128 (438)	100 (438)	1 (1)	1 (1)	16.0	11.4	35.0	5.3
Monroe Township (Gloucester Co.)	3,796	3,109	657	22		8	4 (3)	3 (2)	1 (1)	208 (825)	116 (372)	87 (434)	3 (19)		5.4	3.7	13.2	13.6
Montclair	7,315	4,359	2,884	43		29	12 (5)	11 (4)	1 (1)	191 (583)	53 (125)	138 (458)			2.6	1.2	4.8	
Morris	6,916[23]	5,356	1,412	88	1	59	12 (3)	10 (2)	2 (1)	120[29] (279)	71 (109)	34 (32)	3 (4)		1.7	1.3	2.4	3.4
Mount Holly Township	2,110	1,510	486	93		21	5 (5)	5 (5)		106 (374.5)	66 (208.5)	34 (146)	4 (14)	2 (5)	5.0	4.4	7.0	4.3
Neptune Township	7,186	4,065	2,974	159	3	35	11 (9)	9 (7)	2 (2)	370[31] (1,754)	67 (174.5)	111 (253.5)	3 (9)		6.1[31]	1.6	3.8	1.9
New Brunswick	6,254	2,294	3,103	836	2	19	12 (8)	10 (4)	2 (2)	980 (3,936)	332 (1,051)	565 (2,587)	87 (314)	6 (14)	15.7	14.5	17.9	10.4
Newark	78,492	9,638	56,736	11,981	21	116	95 (61)	79 (46)	16 (15)	2,333 (15,226.5)	117 (747.5)	2,004 (11,507)	211 (2,971)	1 (1)	3.0	1.2	3.5	1.8
North Bergen	7,302	6,513	10	751	2	26	7 (4)	6 (3)	1 (1)	822[32] (1,451.5)	22 (38.5)		6 (11)		11.3[30]	.3		.8
Northern Burlington Co. Regional	2,293	2,042	208	26	2	20	1 (1)		1 (1)	576 (1,150)	526 (1,085)	46 (56)	3 (8)	1 (4)	25.1	25.8	22.7	11.5
Orange City	4,201	853	3,223	92	1	32	9 (4)	6 (1)	3 (3)	130 (390)	5 (15)	125 (375)			3.1	.6	3.9	
Palmyra	1,903	1,499	298	4		2	4 (3)	3 (2)	1 (1)	137 (294)	114 (243)	23 (51)			7.6	7.6	7.7	

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TABLE III

NEW JERSEY

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Passaic	8,461	2,984	2,756	2,667	6	48	11 (9)	9 (7)	2 (2)	1,072 (7,291)	287 (1,307)	498 (4,247)	285 (1,732)	1 (5)	12.7	9.6	18.1	10.7
Passaic Co. Voc.	1,761	1,327	312	117		5	1 (0)		1									
Paterson	27,548	7,554	13,867	6,086	7	34	32 (28)	29 (25)	3 (3)	1,310[m] (8,673.5)	101 (692)	696 (4,051.5)	120 (660)		4.8[m]	1.3	5.0	2.0
Pemberton Township	7,904	5,180	2,023	468	27	206	12 (8)	10 (4)	2 (2)	519 (2,135)	318 (1,281)	176 (722)	24 (129)	1 (3)	6.6	6.1	8.7	5.1
Penns Grove-Upper Penns Neck Reg.	3,043	2,249	708	82		4	7 (7)	6 (6)	1 (1)	379 (1,795)	192 (764)	182 (965)	15 (42)		12.5	8.1	25.7	18.3
Perth Amboy	6,517	2,432	864	3,204	1	16	12 (4)	11 (3)	1 (1)	650 (1,544)	274 (596)	138 (344)	238 (654)		10.0	11.3	16.0	7.4
Piscataway Township	8,569	7,222	1,199	89	5	54	13 (5)	11 (4)	2 (1)	822 (2,901)	676 (2,348)	138 (536)	8 (17)		9.6	9.4	11.5	9.0
Plainfield	9,515	2,101	7,028	334	7	45	14 (8)	13 (7)	1 (1)	366 (1,526)	88 (417)	270 (1,072)	8 (37)		3.8	4.2	3.8	2.4
Pleasantville	3,612	1,580	1,907	125			6 (6)	4 (4)	2 (2)	420 (1,874)	155 (680)	250 (1,143)	15 (51)		11.6	9.8	13.1	12.0
Plumsted Township	797	698	69	32			1 (1)	1 (1)		20 (48.5)	14 (33.5)	4 (11.5)	2 (3.5)		2.5	2.0	5.8	6.3
Princeton Regional	4,281	3,839	344	17	4	77	7 (2)	6 (1)	1 (1)	142 (481)	99 (285)	43 (196)			3.3	2.6	12.5	
Rahway	4,989	3,651	1,180	131	8	19	7 (6)	5 (4)	2 (2)	756 (3,362.5)	534 (2,239)	208 (1,077.5)	13 (46)		15.1	14.6	17.6	9.9
Red Bank	1,397	597	694	97		9	4 (1)	4 (1)		6 (21)		5 (18)	1 (3)		.4	.7	1.0	
Roselle	3,453	2,007	1,346	81	2	17	6 (1)	5	1 (1)	411[m] (1,233)					11.9			
Scotch Plains-Fanwood Regional	7,852	6,831	789	23	1	28	11 (8)	8 (3)	3 (3)	71 (302)	37 (114)	33 (180)		1 (8)	.9	.5	4.3	
Somerdale	845	695	132	17		1	2 (1)	2 (1)		13 (27)	10 (21)	2 (4)	1 (2)		1.5	1.4	1.5	5.9
Somerville	2,960	2,481	411	60		8	6 (4)	5 (3)	1 (1)	263 (864)	209 (701)	43 (130)	11 (33)		8.9	8.4	10.5	18.3
Southern Gloucester Co. Regional	1,452	1,150	265	27	3	7	1 (1)		1 (1)	310 (817)	210 (620)	88 (176)	12 (21)		21.3	18.3	33.2	44.4
Teaneck	7,451	5,389	1,861	135	2	64	11 (5)	8 (2)	3 (3)	261 (941.5)	144 (487.5)	102 (426.5)	15 (27.5)		3.5	2.7	5.5	11.1
Tinton Falls	1,425	902	503	9	1	10	3 (2)	3 (2)		37 (129)	19 (70)	18 (59)			2.6	2.1	3.6	
Trenton	17,246	3,606	11,891	1,532	8	7	21 (8)	19 (6)	2 (2)	1,127[m] (6,069)	326 (2,539)	729 (3,163)	63 (322)		6.5	8.6	6.1	4.1
Union City	9,194	3,226	37	5,894	3	34	9 (2)	6	3 (2)	4 (14)	1 (2)		3 (12)		.04	.03		.1
Union Township (Union Co.)	8,390	7,314	1,043	24		9	10 (10)	7 (7)	3 (3)	578 (2,114)	427 (1,564)	146 (531)	5 (19)		6.9	5.8	14.0	20.8
Upper Deerfield Township	1,195	1,009	107	24		55	2 (1)	2 (1)		44 (135)	38 (114)	5 (15)	1 (6)		3.7	3.8	4.7	4.2
Upper Freehold Regional	1,745	1,556	175	12		2	3 (2)	2 (1)	1 (1)	99 (237)	80 (200)	18 (34)	1 (3)		5.7	5.1	10.3	8.3
Vineland City	11,976	8,201	1,293	2,468	4	10	25 (9)	22 (6)	3 (3)	737 (2,733)	330 (1,232)	255 (952)	150 (543)	2 (6)	6.2	4.0	19.7	6.1
West New York	6,544	2,231	[m] 58	4,224	1	30	7 (4)	6 (3)	1 (1)	285 (1,388)	139 (675)	3 (15)	143 (698)		4.4	6.2	5.2	3.4
Willingboro Township	14,591	11,500	2,821	180	11	79	13 (7)	10 (4)	3 (3)	1,791[m] (8,310)	16 (20)	11 (13)		1 (1)	12.3[m]	.1	.4	
Winslow Township	1,549	1,151	333	59		6	6 (2)	6 (2)		4 (11)	3 (10)	1 (1)			.3	.3	.3	
Woodbine	352	76	166	110			1 (1)	1 (1)		6 (21)	2 (7)	2 (6)	2 (8)		1.7	2.6	1.2	1.8
Woodbury	2,498[m]	1,906	579	6	2	5	5 (5)	4 (4)	1 (1)	105 (588.5)	43 (123)	62 (465.5)			4.2	2.3	10.7	
Woodstown-Pilesgrove Regional	1,834	1,301	511	21	1		3 (3)	2 (2)	1 (1)	245 (519)	140 (296)	102 (217)	3 (6)		13.4	10.8	20.0	14.3
TOTAL (100 Districts)	573,017	289,634	213,325	67,332	299	2,227	843 (500)	692 (384)	151 (116)	36,732[m] (158,533.5)[m]	14,322 (53,925.5)	14,783 (73,067)	2,308 (14,197)	29 (181)	6.4[m]	5.0[m]	7.0[m]	3.4[m]

TABLE IV

OHIO

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Akron City	54,329	38,483	15,679	58	10	99	67 (30)	47 (21)	20 (9)	1,175 (4,225)	906 (3,002.5)	269 (1,197.5)		1 (5)	2.2	2.4	1.7	
Alliance City	5,860	4,818	1,023	8	2	9	10 (5)	9 (4)	1 (1)	341 (1,762)	222 (1,071)	119 (691)			5.8	4.6	11.6	
Archbold Area Local	1,745	1,566		178		1	4 (0)	3	1									
Bloomfield-Mespo Local	619	520	95	4			3 (2)	2 (1)	1 (1)	6 (33)	5 (17)	3 (16)			1.1	1.0	3.2	
Campbell	2,385	1,855	316	209		5	5 (1)	4 (1)	1	4 (12)		2 (6)	2 (6)		.2		.6	1.0
Canton City	19,701	15,455	4,094	99	41	12	31 (23)	25 (17)	6 (6)	322 (1,500)	187 (795)	130 (688)	2 (6)	3 (14)	1.6	1.2	3.2	2.0
Cincinnati	77,873	40,763	36,808	88	26	193	108 (75)	82 (52)	26 (23)	2,782[6] (14,089)	956 (4,682)	1,597 (8,720)			3.6[6]	2.3	4.3	
Clearview Local	1,820	1,317	338	156	7	4	4 (3)	2 (1)	2 (2)	136 (970)	84 (550)	35 (309)	17 (111)		7.5	6.4	10.4	10.9
Cleveland	145,196	58,189	83,596	2,844	319	248	190 (129)	142 (86)	48 (43)	11,633 (75,218)	3,401 (14,882)	8,057 (59,345)	151 (865)	24 (126)	8.0	5.8	9.6	5.3
Cleveland Heights	11,650	10,181	1,213	130	13	114	17 (10)	12 (5)	5 (5)	119 (429.5)	83 (304.5)	36 (125)			1.0	.8	3.0	
Columbus	106,588	74,852	31,312	125	40	259	171	130	41	REPORTED INFORMATION "NOT AVAILABLE"								
Dayton City	52,162	28,698	23,254	84	57	69	68 (54)	57 (43)	11 (11)	3,390 (21,852.5)	1,650 (9,133.5)	1,735 (12,678)	4 (36)	1 (5)	6.5	5.7	7.5	4.8
Defiance City	4,149	3,590	19	537	2	1	7 (3)	5 (1)	2 (2)	111 (758)	79 (556)	3 (9)	29 (703)		2.6	2.2	15.8	5.4
East Cleveland City	8,168	469	7,660	16	11	12	8 (6)	6 (4)	2 (2)	820 (2,682.5)	22 (79)	798 (2,603.5)			10.0	4.7	10.4	
Elyria City	14,037	11,906	2,026	73	17	15	22 (12)	16 (8)	6 (6)	1,143 (4,790.5)	724 (2,636.5)	415 (2,175.5)	2 (4)	2 (4.5)	6.1	6.1	20.5	2.7
Fostoria City	3,654	3,145	314	195			8 (2)	6	2 (2)	95 (771)	63 (458)	22 (269)	10 (43)		2.6	2.0	7.0	5.1
Fremont City	6,962	5,901	367	689		5	10 (6)	8 (4)	2 (2)	353 (2,388.5)	273 (1,734)	39 (249.5)	41 (406)		5.1	4.6	10.6	6.0
Garfield Heights City	5,686	5,387	278	6		15	7 (4)	5 (2)	2 (2)	202 (1,282)	185 (1,144)	17 (138)			3.6	3.4	6.1	
Hamilton City	14,287	12,768	1,481	13	9	16	24 (10)	18 (4)	6 (6)	664 (5,740)	494 (4,217)	160 (1,401)	2 (11)	8 (111)	4.6	3.9	10.8	15.4
Holgate Local	921	759		162			1 (1)		1 (1)	7 (54)	7 (54)				.8	.9		
Jefferson Township Local	2,716	800	1,913		1	2	5 (2)	3	2 (2)	210 (807)	29 (119)	180 (685)		1 (3)	7.7	3.6	9.4	
Lima City	9,997	7,174	2,759	48	8	8	18 (9)	14 (5)	4 (4)	819 (3,555.5)	387 (1,446.5)	431 (2,104)	1 (5)		8.2	5.4	15.6	2.1
Lockland City	1,045	888	155	2			3 (2)	2 (1)	1 (1)	45 (201)	32 (111)	13 (90)			4.3	3.6	8.4	
Lorain City	17,002	11,618	2,491	2,812	62	19	21 (13)	17 (9)	4 (4)	744 (3,776)	357 (1,545)	264 (1,614)	123 (617)		4.4	3.1	10.6	4.4
Madison Township	5,677	4,878	782	12	1	4	7 (6)	5 (4)	2 (2)	279 (1,696)	181 (1,136)	97 (560)		1 (0)	4.9	3.7	12.4	
Mansfield City	11,101	8,579	2,441	51	7	23	20 (10)	15 (5)	5 (5)	831 (4,850.5)	488 (2,788.5)	337 (2,006)	6 (36)		7.5	5.7	13.8	11.8
Massillon City	7,250	6,333	897	8	3	9	14 (6)	11 (3)	3 (3)	342 (1,666)	258 (1,295.5)	84 (370.5)			4.7	4.1	9.4	
Middletown City	13,103	11,516	1,555	17	2	13	25 (7)	22 (4)	3 (3)	574 (2,418)	429 (1,797)	145 (621)			4.4	3.7	9.3	
Mt. Healthy City	7,757	6,699	1,009	15	19	15	8 (6)	5 (3)	3 (3)	261[6] (1,056)	30 (149)	12 (25)			3.4[6]	.4	1.2	
North College Hill	2,278	2,014	248	11	5		4 (2)	3 (1)	1 (1)	79 (372)	48 (210)	31 (162)			3.5	2.4	12.5	
Ohio City-Liberty	472	400		72			1 (0)		1									
Old Fort Local	761	555	2	204			2 (1)	1	1 (1)	8 (20)	8 (20)				1.1	1.4		
Painesville City	3,411	2,737	636	24	4	10	8 (5)	6 (4)	2 (1)	356 (1,238)	241 (829.5)	113 (402.5)	1 (3)	1 (3)	10.4	8.8	17.8	4.2
Pottsville Local	664	574	6	84			1 (1)		1 (1)	1 (5)	1 (5)				.2	.2		
Princeton City	10,420	7,248	3,115	15	17	25	11 (5)	9 (3)	2 (2)	744[6] (599.5)	299 (173)	445 (426.5)			7.1	4.1	14.3	
Sandusky City	6,943	5,173	1,697	65	5	3	13 (7)	10 (4)	3 (3)	362 (4,572)	142 (1,815)	212 (2,693)	8 (64)		5.2	2.7	12.5	12.3
Shaker Heights City	7,097	4,929	2,128	7		33	12 (7)	9 (4)	3 (3)	153 (403)	69 (167)	83 (234)	1 (2)		2.2	1.4	3.9	14.3
South-Western City	16,370	15,958	325	40	11	36	26 (11)	23 (8)	3 (3)	729 (5,839)	682 (5,475)	46 (356)		1 (8)	4.5	4.3	14.2	
Springfield City	16,536	12,640	3,829	26	21	20	30 (17)	22 (9)	8 (8)	857 (5,247)	424 (2,251)	428 (2,974)	4 (17)	1 (5)	5.2	3.4	11.2	15.4
Steubenville City	4,266	3,052	1,191	10	1	12	10 (6)	9 (5)	1 (1)	150 (975)	76 (543)	72 (424)		2 (8)	3.5	2.5	6.0	
Toledo	61,694	42,773	16,816	1,950	24	131	78 (60)	63 (45)	15 (15)	2,899 (18,629)	1,485 (5,899)	1,336 (4,626.5)	66 (295.5)	2 (8)	4.7	3.5	7.9	3.4
Warren City	13,733	10,303	3,373	25	16	16	22 (8)	19 (5)	3 (3)	396 (1,483)	173 (560)	222 (914)		1 (3)	2.9	1.7	6.6	
Warrensville Heights City	2,958	1,398	1,515	13	2	32	6 (4)	4 (2)	2 (2)	167 (1,056)	47 (317)	119 (735)	1 (4)		5.6	3.4	7.9	7.7
Xenia	8,271	7,211	933	9	9	9	11 (5)	8 (2)	3 (3)	576 (3,157)	473 (2,581)	103 (576)			7.0	6.5	11.0	
Yellow Springs Exempted Village	1,030	671	345	6		8	3 (2)	2 (1)	1 (1)	12 (36)	8 (24)	4 (14)			1.2	1.2	1.2	
Youngstown	24,114	12,365	10,780	883	31	45	41 (32)	27 (18)	14 (14)	1,563[6] (8,592)	381 (1,748)	1,102 (6,517)	47 (223)	6 (25)	6.5[6]	3.1	10.2	5.3
Zanesville City	7,716	6,809	897	6		4	18 (6)	14 (2)	4 (4)	150 (653)	123 (520)	27 (133)			1.9	1.8	3.0	
TOTAL (47 Districts)	802,179	516,015	271,708	12,099	803	1,554	1,183 (616)	902 (399)	281 (217)	38,602[6] (203,673)	16,211 (78,838)	19,343 (119,906)	518 (2,957.5)	55 (323.5)				
TOTAL (Excluding Columbus)	695,591	441,163	240,396	11,974	763	1,295	1,012 (616)	772 (399)	240 (217)	38,602[6] (203,673)	16,211 (78,838)	19,343 (119,906)	518 (2,957.5)	55 (323.5)	5.3[6]	3.7	8.0	4.3

TABLE V.

SOUTH CAROLINA

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						Total Students Suspended At Least Once[2]					Percent of Total Enrollment Suspended at Least Once[3]				
	Total	White	Black	Span. Surn. Am.	Am. Ind.	Asian Am.	T	W	B	SSA[4]	O[4]	T	W	B	SSA	O
Abbeville	4,306	2,321	1,985				232	91	141			5.4	3.9	7.1		
Aiken	24,326	16,504	7,735	11	69	7	1,782	815	967			7.3	4.9	12.5		
Allendale	2,430	557	1,873				157	39	118			6.5	7.0	6.3		
Anderson #1	4,253	3,658	590	3	1	1	166	120	45	1		3.9	3.3	7.6	33.3	
Anderson #2	3,946	3,044	898	3		1	451	264	187			11.4	8.7	20.8		
Anderson #3	2,286	1,631	655				160	65	95			7.0	4.0	14.5		
Anderson #4	2,257	1,520	737				16[5]					.7				
Anderson #5	12,523	9,622	2,887	5	6	3	696	394	302			5.6	4.1	10.5		
Bamberg #1	2,162	877	1,285				85	21	64			3.9	2.4	5.0		
Bamberg #2	1,757	287	1,470				90	14	76			5.1	4.9	5.2		
Barnwell #29	1,055	483	572				65	9	56			6.2	1.9	9.8		
Barnwell #45	2,116	1,199	917				155	70	85			7.3	5.8	9.3		
Beaufort	9,779	3,826	5,907	15	7	24	584	253	330	1		6.0	6.6	5.6	6.7	
Berkeley	18,493	11,271	7,072	54	8	88	682	363	319			3.7	3.2	4.5		
Calhoun #1	1,648	267	1,381				61	13	48			3.7	4.9	3.5		
Calhoun #2	758	4	754				9	0	9			1.2		1.2		
Charleston	55,562	28,241	26,965	155	47	154	4,272	1,927	2,329	11	5	7.7	6.8	8.6	7.1	2.5
Cherokee	8,639	6,218	2,419		2		1,153	667	486			13.3	10.7	20.1		
Chester	7,629	3,674	3,955				730	294	436			9.6	8.0	11.0		
Chesterfield	8,744	5,149	3,595				477	288	189			5.5	5.6	5.3		
Clarendon #1	2,009	2	2,007				27	0	27			1.3		1.3		
Clarendon #2	3,229	761	2,468				93	38	55			2.9	5.0	2.2		
Clarendon #3	1,310	571	739				58	23	35			4.4	4.0	4.7		
Colleton	6,992	2,602	4,387		3		614	161	453			8.8	6.2	10.3		
Darlington	13,310	5,991	7,315	2		2	572	160	412			4.3	2.7	5.6		
Dillon #1	1,513	616	887		10		41	14	27			2.7	2.3	3.0		
Dillon #2	4,863	2,262	2,484		117		222	81	137		4	4.6	3.6	5.5		3.4
Dillon #3	2,107	1,030	1,077				68	32	36			3.2	3.1	3.3		
Dorchester #1	1,694	438	1,256				52	10	42			3.1	2.3	3.3		
Dorchester #2	6,842	5,241	1,560	7	18	16	468	207	261			6.8	3.9	16.7		
Edgefield	3,649	973	2,676				242	63	179			6.6	6.5	6.7		
Fairfield	4,997	1,241	3,756				358	94	264			7.2	7.6	7.0		
Florence #1	14,221	8,266	5,950		3	2	1,080	449	630		1	7.6	5.4	10.6		20.0
Florence #2	1,623	813	810				139	46	93			8.6	5.7	11.5		
Florence #3	4,847	1,972	2,873		2		370	136	234			7.6	6.9	8.1		
Florence #4	1,537	180	1,357				136	15	121			8.8	8.3	8.9		
Florence #5	1,306	897	409				40	22	18			3.1	2.5	4.4		
Georgetown	9,296	3,627	5,670	1			780	195	585			8.4	5.4	10.3		
Greenville	56,930	44,164	12,680	41	13	32	3,754	1,953	1,800	1		6.6	4.4	14.2	2.4	
Greenwood #50	9,720	6,139	3,559	18	2	2	1,078	401	677			11.1	6.5	19.0		
Greenwood #51	1,261	988	273				40	18	22			3.2	1.8	8.1		
Greenwood #52	1,403	941	462				68	41	27			4.8	4.4	5.8		
Hampton #1	2,496	1,155	1,341				54	24	30			2.2	2.1	2.2		
Hampton #2	1,940	321	1,619				0					0.0				
Horry	18,936	12,372	6,541	7	1	15	542	346	196			2.9	2.8	3.0		
Jasper	3,005	659	2,345			1	159	38	121			5.3	5.8	5.2		
Kershaw	9,008	5,259	3,741	3	1	4	517	244	273			5.7	4.6	7.3		
Lancaster	11,428	7,970	3,457	1			394	235	159			3.4	2.9	4.6		
Laurens #55	5,596	3,267	2,331				410	189	221			7.3	5.8	9.5		
Laurens #56	3,899	2,397	1,501	1			234	77	157			6.0	3.2	10.5		
Lee #1	4,520	679	3,840			1	102	24	79			2.3	3.5	2.1		
Lexington #1	5,609	5,070	538	1			191	133	58			3.4	2.6	10.8		
Lexington #2	11,374	10,088	1,260	8	5	13	834	607	227			7.3	6.0	18.0		
Lexington #3	2,661	1,672	989				132	47	85			5.0	2.8	8.6		
Lexington #4	1,280	825	462			3	57	37	20			4.4	4.5	4.3		
Lexington #5	5,962	5,315	643	1		3	235	144	91			3.9	2.7	14.2		
Marion #1	3,186	1,346	1,840				305	87	218			9.6	6.5	11.8		
Marion #2	3,348	1,219	2,027		2		67	9	58			2.1	.7	2.9		
Marion #3	966	152	814				21	6	15			2.2	3.9	1.8		
Marion #4	555	157	398				0					0.0				
Marlboro	7,694	3,443	4,239		11	1	309	60	249			4.0	1.7	5.9		
McCormick	2,384	501	1,883				102	21	81			4.3	4.2	4.3		
Newberry	6,604	3,639	2,965				180	52	128			2.7	1.4	4.3		
Oconee	10,417	9,196	1,216	3	3		457	251	206			4.4	2.7	16.9		
Orangeburg #1	1,376	479	897				79	27	52			5.7	5.6	5.8		
Orangeburg #2	1,166	171	995				68	14	54			5.8	8.2	5.4		
Orangeburg #3	4,211	586	3,625				45	9	36			1.1	1.5	1.0		
Orangeburg #4	1,627	753	873			1	64	28	36			3.9	3.7	4.1		
Orangeburg #5	6,681	2,097	4,580		4		156	34	122			2.3	1.6	2.7		
Orangeburg #6	1,384	553	801				21	9	12			1.6	1.6	1.5		
Orangeburg #7	1,138	190	938				43	8	35			3.8	4.2	3.7		
Orangeburg #8	604	258	346				9	3	6			1.5	1.2	1.7		
Pickens	13,473	11,950	1,507	2	4	10	696	560	136			5.1	4.7	8.4		
Richland #1	35,791[6]	15,433	20,314	22	6	26	4,085	1,066	3,019			11.3	6.9	14.9		
Richland #2	10,006	8,111	1,611	167	37	79	785	532	245	5	3	7.8	6.6	15.2	3.0	2.8
Saluda[52]	2,530	1,452	1,076	2			52	13	39			2.1	.9	3.6		
Spartanburg #1	3,968	3,159	797	7	2		174	114	60			4.4	3.6	7.5		
Spartanburg #2	5,586	4,683	890			4	110	77	33			2.0	1.6	3.7		
Spartanburg #3	3,480	2,674	806				157	93	64			4.5	3.5	7.9		
Spartanburg #4	2,628	1,955	673				107	62	45			4.1	3.2	6.7		
Spartanburg #5	4,085	2,918	1,167				125	68	57			3.1	2.3	4.9		
Spartanburg #6	7,096	6,006	1,083	1	3	2	142	106	36			2.0	1.8	3.3		
Spartanburg #7	12,286	7,505	4,766	15	6	3	841	378	463			6.8	5.0	9.7		
Sumter #2	10,377	4,425	5,884	31	14	23	815	323	490		3	7.9	7.3	8.3		5.4

TABLE V.

SOUTH CAROLINA

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]							Total Students Suspended At Least Once[2]						Percent of Total Enrollment Suspended at Least Once[4]				
	Total	White	Black	Span. Surn.	Am. Ind.	Asian Am.	T	W	B	SSA	O[3]	T	W	B	SSA	O
Sumter #17	10,797	5,237	5,547	5	3	5	277	120	157			2.6	2.3	2.8		
Union	7,205	4,400	2,793		12		541	264	277			7.5	6.0	9.9		
Williamsburg	9,957	2,072	7,885				398	102	296			3.9	4.9	3.6		
York #1	3,844	2,434	1,408		2		187	105	82			4.9	4.3	5.8		
York #2	2,610	1,837	771		2		253	139	114			9.7	7.6	14.8		
York #3	12,383	8,238	4,077	2	60	6	965	368	590		7	7.8	4.5	14.5		10.6
York #4	2,376	2,024	351	1			158	114	44			6.6	5.6	12.5		
TOTAL (91 Districts)	630,739	366,359	260,767	595	466	532	38,969[5]	17,233	21,669	19	22	6.2	4.7[5]	8.3[5]	3.2	2.2

TABLES I-V FOOTNOTES

[1] Unless noted otherwise, enrollment figures were taken from the *Directory of Public Elementary and Secondary Schools in Selected Districts, Enrollment and Staff by Racial/Ethnic Group,* Fall 1972, U.S. Department of Health, Education and Welfare, Office for Civil Rights. Because the suspension figures reported to the Office for Civil Rights in the fall of 1973 were for the previous school year, they had to be compared, where possible, to the school districts' enrollments in the fall of 1972.

[2] Generally, for purposes of these tabulations, any schools serving grade six or grades lower than six were classified as "elementary" schools. However, in districts operating only one school serving all 12 grades, the one school was classified as a secondary school. Ungraded schools and other special schools, such as those serving various types of handicapped students, were classified as elementary schools unless it was clear that the special schools served only secondary students.

[3] For purposes of these tabulations, "secondary" schools include single schools serving all twelve grades, other schools serving no grades lower than seventh grade, and ungraded schools and other special schools clearly serving junior and senior high school students.

[4] These figures were compiled from the Individual School Campus Reports (Form OS/CR 102) submitted to the Office for Civil Rights of the Department of Health, Education and Welfare in the fall of 1973. Because the data regarding suspensions were not edited by the Office for Civil Rights, these tabulations represent conservative interpretations of the figures reported. Suspension figures for individual schools were not used unless information on both the number of students suspended at least once and the total number of suspension days was supplied. An exception to this rule was made if no suspension days were recorded for any of the schools in a district. The suspension data for individual schools were also not used when obvious errors were recognized. For example, when the number of students of a particular race that were suspended exceeded the total number of students of that race in the school in the 1972-1973 school year, neither the suspensions nor suspension days were counted. Obvious arithmetical errors were corrected. The figures compiled from the Individual School Campus Reports tend to be an undercount, not only for the reasons described above, but also because, in a number of the school districts reporting, "no information available" was recorded for certain schools, particularly junior

and senior high schools where suspensions are more apt to occur. Some school districts only reported to OCR suspensions over a certain number of days, thus many more students were affected by suspensions than are reflected here.

[5] It should be noted that these percentages tend to understate the extent to which suspensions are being used because they reflect the percentage of the total enrollment that was suspended at least once, while the great majority of suspensions occur at the junior and senior high school level.

[6] This school, in Crawfordsville, served grades 3-12.

[7] The Fall 1972 *Directory of Public Elementary and Secondary Schools*, p. 53, reflected that Harmony Grove School District No. 1 had two schools serving grades 1-6 and 7-12 respectively. In reporting its suspension data to OCR in the fall of 1973, Harmony Grove reported these two schools as one campus serving grades K-12. In order to accurately report the suspension data, the district was recorded as having one school.

[8] The Fall 1972 *Directory of Public Elementary and Secondary Schools*, p. 54, reflected that the Helena-West Helena School District had four secondary schools serving grades 7, 8, 9-10, and 11-12 respectively. In reporting its suspension data to OCR in the fall of 1973, Helena-West Helena reported these four schools as two campuses, one serving grades 7-8 and one grades 9-12. In order to accurately report the suspension data, the district was recorded as having two secondary schools.

[9] 1972-1973 enrollment figures were not available for the Lakeside School District, so 1973–1974 enrollment data from Form OS/CR 101 were used.

[10] No suspension days were recorded for the schools in the Lakeside School District.

[11] Because no suspension days were reported for the schools in Lakeside, the suspensions should not be counted when comparisons of suspensions and suspension days are made.

[12] The Baltimore City School District did not provide a racial breakdown of its suspension figures.

[13] There are 140 students in Baltimore County who were suspended for 210 days who are included in the total, but for whom no racial or ethnic breakdown was reported.

[14] There are 29 students in Howard County who were suspended for 106 days who are included in the total, but for whom no racial or ethnic breakdown was reported.

[15] There are 18 students in Somerset County who were suspended for 54 days who are included in the total, but for whom no racial or ethnic breakdown was reported.

[16] Because no suspension days were reported for any of the schools in Worcester County, the suspensions should not be counted when comparisons of suspensions and suspension days are made.

[17] There are a total of 1,870 students (suspended for 64,553 days) in four school districts who are included in the total of the number of students suspended and suspension days but for whom no racial or ethnic identification was reported.

[18] Because the Baltimore City School District did not provide a racial breakdown of suspended students, the white enrollment (57,350) in the district was not counted when the percent of white students suspended in the surveyed districts was computed.

[19] Because the Baltimore City School District did not provide a racial breakdown of suspended students, the black enrollment (129,250) in the district was not counted when the percent of black students suspended in the surveyed districts was computed.

[20] In order to accurately report the suspension data for the Asbury Park District, 1973-1974 enrollment figures had to be used because the middle school in Asbury Park was not included in the enrollment figures in the Fall 1972 *Directory of Public Elementary and Secondary Schools*, p. 821.

[21] There were 467 students in Asbury Park who were suspended for 1,401 days who are included in the total, but for whom no racial or ethnic identification was reported.

[22] There were 987 students in Bridgeton who were suspended for 2,981 days who are included in the total but not in the racial and ethnic breakdowns because no racial or ethnic data were provided for suspension days. If the 987 students (27 white, 430 black and 530 Spanish-surnamed American) had been counted, the percentages, by race and ethnic group, would have been 26.1, 34.1 and 32.5, respectively.

[23] The Downe Township District reported that it keeps no information on suspensions by race and no information on suspension days.

[24] There was one student in Ewing Township who was suspended for one day who is included in the total, but for whom no racial or ethnic identification was reported.

[25] Because 1972-1973 enrollment figures were not available for Fairfield Borough, 1973-1974 enrollment data from Form OS/CR 101 were used.

[26] Because 1972-1973 enrollment figures were not available for Fairfield Township, 1973-1974 enrollment data from Form OC/CR 101 were used.

[27] There were nine students in Hillside who were suspended for 20 days who are included in the total but not in the racial and ethnic breakdowns because no racial and ethnic data on suspension days were provided.

[28] There were 158 students in Jersey City who were suspended for 1,273 days who are included in the total but not in the racial and ethnic breakdowns because no racial and ethnic data on suspension days were provided. If the 158 students (20 white, 127 black and 11 Spanish-surnamed American) had been counted, the percentages, by race and ethnic group, would have been 1.2, 2.5 and 1.0 respectively.

[29] Because 1972-1973 enrollment figures were not available for Morris, 1973-1974 enrollment data from Form OS/CR 101 were used.

[30] Twelve students, suspended for 24 days, are included in the total for Morris but not in the racial or ethnic breakdowns because no racial or ethnic data on suspension days were reported.

[31] There were 189 students suspended for 1,317 days, who are included in the total for Neptune Township, but for whom no racial or ethnic identification was reported.

[32] There were 794 students, suspended for 1,402 days, who are included in the total for North Bergen, but for whom no racial or ethnic identification was reported.

[33] There were 393 students, suspended for 1,270 days, in Paterson who are included in the total but not in the racial and ethnic breakdowns because no racial and ethnic data on suspension days were provided. If the 393 students (36 white, 328 black and 29 Spanish-surnamed American) had been counted, the percentages, by race and ethnic group, would have been 1.8, 7.4 and 2.4, respectively.

[34] The Roselle District reported that it had no information available, by race or ethnic group, on students suspended or suspension days.

[35] There were nine students, suspended for 45 days, in Trenton who are included in the total but not in the racial and ethnic breakdowns because no racial and ethnic data on suspension days were provided. There were also an additional 745 students who were suspended who are not counted at all, for purposes of our tabulations, because no information on suspension days was reported.

[36] There were 1,763 students, suspended for 6,276 days, who are included in the total for Willingboro, but for whom no racial or ethnic identification was reported.

[37] Because 1972-1973 enrollment figures were not available for Woodbury, 1973-1974 enrollment data from Form OS/CR 101 were used.

[38] There were 5,290 students, suspended for 17,243 days, who are included in the total, but for whom no racial or ethnic identification on students suspended and/or suspension days were reported.

[39] Because no suspension days were reported for the schools in Down Township, the suspensions should not be counted when comparisons of suspensions and suspension days are made.

[40] Because neither Downe Township nor Roselle provided a racial or ethnic breakdown of suspended students the enrollments in these two districts (2,267 white, 1,432 black, 91 Spanish-surnamed American) were not counted when the percentage of students suspended, by race and ethnic group, in the surveyed districts was computed.

[41] There are 229 students in Cincinnati who were suspended for 687 days who are included in the total, but for whom no racial or ethnic identification was reported.

[42] There are 219 students in Mt. Healthy who were suspended for 882 days who are included in the total, but for whom no racial or ethnic identification was reported.

[43] There is a significant discrepancy here between reported suspensions and suspension days because for some of the schools in this district both out-of-school and in-school suspensions (for which there are no suspension days) were recorded. Where it was possible to distinguish, in-school suspensions were not included in the count.

[44] There are 27 students in Youngstown who were suspended for 79 days who are included in the total, but for whom no racial or ethnic identification was reported.

[45] There are a total of 475 students (suspended for 1,648 days) in three districts who are included in the total number of students suspended but for whom no racial or ethnic identification was provided.

[46] Because the Columbus School District reported that no information was available regarding suspensions, the enrollment in Columbus was not included when the percentages were computed.

[47] The suspension figures for individual districts were drawn from the table entitled "Student Suspensions and Expulsions in South Carolina School Districts, 1972-1973" at pp. 14-16 of "Do Unto Others . . . A Report on School Districts' Compliance With South Carolina's 1973 'Student Discipline Law'", *Your Schools*, Special Report, April 1974, published by the South Carolina Community Relations Program of the American Friends Service Committee. The figures in that table were taken from the School System Summary Reports (Form OS/CR 101, Item VII.B.) submitted to the Office for Civil Rights of the Department of Health, Education and Welfare in the fall of 1973.

[48] Students who were recorded in the table in *Your Schools* as "other" were identified further by checking back to the School System Summary Report (Form OS/CR 101, Item VII. B.).

[49] "Other" includes students identified on Form OS/CR 101 as American Indian or Asian American.

[50] No racial breakdown of the 16 suspensions reported in Anderson County No. 4 was included in Item VII. B. on Form OS/CR 101.

[51] The enrollment figures here do not include two schools which were recorded as being in Richland County No. 1 in the *Directory of Public Elementary and Secondary Schools in Selected Districts*, Fall 1972, p. 1264, but were not in fact part of the public school system. The two schools, John G. Richards for Boys and Willow Lane School for Girls, are correctional institutions.

[52] The figures for the Saluda County School District include enrollment and suspension figures for Hollywood School District No. 4 which was operative during the 1972-1973 school year but is no longer operative.

[53] The total includes 16 students who were suspended in Anderson County No. 4 for whom no racial breakdown was reported.

[54] Because Anderson County No. 4 did not provide a racial breakdown of suspended students, the white enrollment (1,520) in the district was not counted when the percent of white students suspended in the surveyed districts was computed.

[55] Because Anderson County No. 4 did not provide a racial breakdown of suspended students, the black enrollment (737) in the district was not counted when the percent of black students suspended in the surveyed district was computed.

APPENDIX B

Student Suspensions Since the Beginning of the 1972-73 School Year as Reported to Staff of the Children's Defense Fund

As part of an extensive survey of children out of school in 17 school districts throughout the country, the Children's Defense Fund of the Washington Research Project, Inc. attempted to determine the extent to which suspensions were a common method of discipline employed by the schools in those districts. Indeed, the study showed that 4.4 percent of all school-age children surveyed were suspended and 7.9 percent of all secondary school-age children surveyed were suspended. In 11 of the 30 areas surveyed, over 10 percent of the secondary school-age children were suspended. Over 15 percent of the secondary school-age children were suspended in four of the areas. In addition, monitors found that 24 percent of the children suspended at least once were, in fact, suspended three or more times.

This information was gathered using a uniform questionnaire which included questions about the number of children who had been suspended, the frequency and duration of the suspensions, the reasons for the suspensions, and the procedures—regarding notification, hearing, and readmittance—which accompanied the disciplinary actions. Staff monitors visited more than 8,000 households in nine states and the District of Columbia—specifically, parts of Autauga County and Montgomery, Alabama; Denver, Colorado; Hancock County and Macon, Georgia; Davenport, Iowa; Floyd County, Kentucky; Portland, Maine; Cambridge, Holyoke, New Bedford, Somerville and Springfield, Massachusetts; Canton, Mississippi; Columbia and Sumter County, South Carolina; and Washington, D.C.

The areas surveyed—census tracts and housing projects in urban areas, and parts of rural counties—were selected on the basis of specific census measures including racial and ethnic population, income, family size, and number of children under 18 years old and on the basis of information

gathered from community contacts. In an effort to cover more households than the Census Bureau did in the 15 percent sample through which it gathered information on children not enrolled in school, Children's Defense Fund staff members visited at least every fourth household. Interviewing in these areas took place between July 1973 and March 1974.

There are three tables which follow: Table I shows, for each area surveyed, the number and percent of school-age children by age level, suspended from school at least once since the beginning of the 1972-73 school year and the total number of suspensions involved. Since 90 percent of the children suspended at least once were secondary school-age students, Tables II and III describe, for each area surveyed where more than three percent of the 12-17 year-olds were suspended, the number of times these students were suspended (Table II) and the durations of these suspensions (Table III). The raw data from which these tables were prepared is available at the Washington Office of the Children's Defense Fund, 1763 R Street, N.W., Washington, D.C.

TABLE I

School-Age Children (Ages 6 through 17) Suspended at Least Once Since the Beginning of the 1972-1973 School Year *

Areas Surveyed		Number of School Age (6-17) Children Surveyed	Children Ages 6-17 Suspended At Least Once			Children Ages 12-17 Suspended At Least Once		
State	Area		Number Suspended	% of All Children Surveyed 6-17	Number of Suspensions	Number Suspended	% of All Children Surveyed 12-17	Number of Suspensions
Alabama	Autauga County	370	10	2.7%	10	9	4.6%	9
	Montgomery Census Tract 3	187	5	2.7%	11	4	3.9%	9
	Montgomery—Northgate Housing Project	102	3	2.9%	5	3	5.3%	5
Colorado	Denver Census Tract 1.01	101	2	2.0%	6	2	4.1%	6
	Denver Census Tract 8	313	22	7.0%	41	16	10.3%	32
	Denver Census Tract 41.01	153	19	12.4%	50	16	25.0%	45
Georgia	Hancock County	356	0	0%	0	0	0%	0
	Macon Census Tract 127	223	7	3.1%	8	7	6.5%	8
Iowa	Davenport Census Tract 107	119	7	5.9%	10	6	9.8%	8
	Davenport Census Tract 123	122	1	0.8%	2	1	1.6%	2
Kentucky	Floyd County	834	2	0.2%	2	2	0.5%	2
Maine	Portland Census Tract 11	196	13	6.6%	14	13	12.7%	14
	Portland Census Tract 12	64	5	7.8%	5	5	14.7%	5
	Portland Census Tract 19	223	2	0.9%	2	2	1.5%	2
	Portland—Bayside East Housing Project	66	2	3.0%	4	2	8.0%	4
	Portland—Riverton Housing Project	120	8	6.7%	15	6	10.0%	13
Massachusetts	Cambridge Census Tract 3524	162	3	1.9%	6	3	4.3%	6
	Cambridge Census Tract 3527	142	1	0.7%	2	1	1.3%	2
	Holyoke Census Tract 8114	341	18	5.3%	38	14	8.0%	34
	New Bedford Census Tract 6510	272	11	4.0%	21	11	8.3%	21

* Survey data gathered between July 1973 and March 1974.

	New Bedford Census Tract 6526	359	11	3.1%	19	11	6.5%	19
	Somerville Census Tract 3512	378	1	0.3%	2	1	0.5%	2
	Springfield Census Tract 8008	366	19	5.2%	34	17	9.5%	32
	Springfield Census Tract 8018	360	24	6.7%	35	22	13.0%	33
Mississippi	Canton—Joes Prichard Homes Housing Project	161	16	9.9%	26	14	15.4%	22
South Carolina	Columbia Census Tract 5	225	26	11.6%	71	24	20.9%	68
	Columbia Census Tract 22	75	3	4.0%	16	3	7.5%	16
	Sumter County Precinct 2	222	17	7.7%	24	17	14.3%	24
	Sumter County Precincts 1 and 28-8	398	45	11.3%	108	41	17.4%	95
Washington, D.C.	Census Tract 74.04	473	27	5.7%	36	24	10.3%	31
Total		7483	330	4.4%	623	297	7.9%	569

* Survey data gathered between July 1973 and March 1974.

TABLE II

Frequency of Suspensions of Secondary School-Age Children (Ages 12 through 17) Since the Beginning of the 1972-1973 School Year*
(Only for Areas Where Over 3 Percent of the Children Surveyed Age 12-17 Were Suspended)

Areas Surveyed		Children 12-17 Suspended At Least Once		Frequency of Suspensions for Children 12-17**					
				Children Suspended Once		Children Suspended Twice		Children Suspended 3 or More Times	
State	Area	Number Suspended	% of All Children Surveyed 12-17	Number Suspended	% of All Children Suspended	Number Suspended	% of All Children Suspended	Number Suspended	% of All Children Suspended
Alabama	Autauga County	9	4.6%	9	100%	0	0%	0	0%
	Montgomery Census Tract 3	4	3.9%	2	50%	0	0%	2	50%
	Montgomery-Northgate Housing Project	3	5.3%	2	67%	0	0%	1	33%
Colorado	Denver Census Tract 1.01	2	4.1%	1	50%	0	0%	1	50%
	Denver Census Tract 8	16	10.3%	7	44%	5	31%	4	25%
	Denver Census Tract 41.01	16	25.0%	6	38%	1	6%	9	56%
Georgia	Macon Census Tract 127	7	6.5%	6	86%	1	14%	0	0%
Iowa	Davenport Census Tract 107	6	9.8%	5	83%	0	0%	1	17%
Maine	Portland Census Tract 11	13	12.7%	12	92%	1	8%	0	0%
	Portland Census Tract 12	5	14.7%	5	100%	0	0%	0	0%
	Portland-Bayside East Housing Project	2	8.0%	1	50%	0	0%	1	50%
	Portland-Riverton Housing Project	6	10.0%	3	50%	1	17%	2	33%
Massachusetts	Cambridge Census Tract 3524	3	4.3%	1	33%	1	33%	1	33%
	Holyoke Census Tract 8114	14	8.0%	5	36%	5	36%	4	29%
	New Bedford Census Tract 6510	11	8.3%	7	64%	0	0%	4	36%
	New Bedford Census Tract 6536	11	6.5%	6	55%	2	18%	3	27%
	Springfield Census Tract 8008	17	9.5%	11	65%	3	18%	3	18%
	Springfield Census Tract 8018	22	13.0%	16	73%	0	0%	6	27%
Mississippi	Canton-Joes Prichard Homes Housing Project	14	15.4%	10	71%	2	14%	2	14%
South Carolina	Columbia Census Tract 5	24	20.9%	9	38%	6	25%	9	38%
	Columbia Census Tract 22	3	7.5%	0	0%	1	33%	2	67%
	Sumter County Precinct 2	17	14.3%	11	65%	5	29%	1	6%
	Sumter County Precincts 1 and 26-B	41	17.4%	20	49%	8	20%	13	32%
Washington, D.C.	Census Tract 74.04	24	10.3%	20	83%	2	8%	2	8%
	Total	290	10.5%	175	60%	44	15%	71	24%

* Survey data gathered between July 1973 and March 1974.
** Percentages total 100 percent.

TABLE III

Duration of Suspensions of Secondary School-Age Children (Ages 12 through 17) Since the Beginning of the 1972-1973 School Year *
(Only for Areas Where Over 3 Percent of the Children Surveyed Age 12-17 Were Suspended.)

Areas Surveyed		Children 12-17 Suspended At Least Once		Suspensions of Children 12-17		Duration of Suspensions**							
						1-3 Days		4-5 Days		6-10 Days		Over 10 Days	
State	Area	Number Suspended	% of All Children Surveyed 12-17	Number	Number for which Data Collected on Duration	Number of Suspensions	% of All Suspensions	Number of Suspensions	% of All Suspensions	Number of Suspensions	% of All Suspensions	Number of Suspensions	% of All Suspensions
Alabama	Autauga County	9	4.6%	9	9	5	56%	1	11%	3	33%	0	0%
	Montgomery Census Tract 3	4	3.9%	9	9	5	56%	4	44%	0	0%	0	0%
	Montgomery—Northgate Housing Project	3	5.3%	5	4	4	100%	0	0%	0	0%	0	0%
Colorado	Denver Census Tract 1.01	2	4.1%	6	6	5	83%	0	0%	1	17%	0	0%
	Denver Census Tract 8	16	10.3%	32	32	23	72%	6	19%	2	6%	1	3%
	Denver Census Tract 41.01	16	25.0%	45	45	41	91%	4	9%	0	0%	0	0%
Georgia	Macon Census Tract 127	7	6.5%	8	8	5	63%	0	0%	3	38%	0	0%
Iowa	Davenport Census Tract 107	6	9.8%	8	7	5	71%	2	29%	0	0%	0	0%
Maine	Portland Census Tract 11	13	12.7%	14	12	2	17%	6	50%	0	0%	4	33%
	Portland Census Tract 12	5	14.7%	5	5	2	40%	1	20%	2	40%	0	0%
	Portland-Bayside East Housing Project	2	8.0%	4	2	1	50%	1	50%	0	0%	0	0%
	Portland-Riverton Housing Project	6	10.0%	13	13	7	54%	4	31%	1	8%	1	8%
Massachusetts	Cambridge Census Tract 3524	3	4.3%	6	3	2	67%	1	33%	0	0%	0	0%
	Holyoke Census Tract 8114	14	8.0%	34	31	17	55%	9	29%	5	16%	0	0%
	New Bedford Census Tract 6510	11	8.3%	21	18	15	83%	0	0%	3	17%	0	0%
	New Bedford Census Tract 6526	11	6.5%	19	19	19	100%	0	0%	0	0%	0	0%
	Springfield Census Tract 8008	17	9.5%	32	29	15	52%	12	41%	2	7%	0	0%
	Springfield Census Tract 8018	22	13.0%	33	24	14	58%	8	33%	2	8%	0	0%
Mississippi	Canton-Joes Prichard Homes Housing Project	14	15.4%	22	22	10	45%	10	45%	2	9%	0	0%
South Carolina	Columbia Census Tract 5	24	20.9%	68	52	43	83%	6	12%	3	6%	0	0%
	Columbia Census Tract 22	3	7.5%	16	16	9	56%	7	44%	0	0%	0	0%
	Sumter County Precinct 2	17	14.3%	24	24	19	79%	4	17%	1	4%	0	0%
	Sumter County Precincts 1 and 26-B	41	17.4%	96	94	41	44%	29	31%	23	24%	1	1%
Washington, D.C.	Census Tract 74.04	24	10.3%	31	30	21	70%	8	27%	1	3%	0	0%
	Total	290	10.5%	559	514	330	64%	123	24%	54	11%	7	1%

* Survey data gathered between July 1973 and March 1974.

** Percentages total 100 percent.

73-898

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. [redacted]

NORVAL GOSS, *et al.*,

Appellants,

—v.—

EILEEN LOPEZ, *et al.*,

Appellees.

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-896

NORVAL GOSS, *et al.*,

Appellants,

—v.—

EILEEN LOPEZ, *et al.*,

Appellees.

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

Interest of *Amicus*

The American Civil Liberties Union is a nationwide nonpartisan organization dedicated to preservation of the liberties safeguarded by the Bill of Rights. It files this brief with the consent of the parties.

In recent years, the rights of public school students have been a major focus of the Union's concern.[1] Reflecting that

[1] For the past several years, the New York Civil Liberties Union has maintained a Student Rights Project, which has sought to establish and protect the rights of students in the New York City public schools. See generally, *NYCLU Student Rights Project: Report on the First Two Years, 1970-1972*, ERIC Document No. ED 073 524.

concern, the Union urged this Court in *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969), to extend to students the free speech protections of the First Amendment. Five years later, we ask this Court to reaffirm its holding in *Tinker* that students are " 'persons' under our Constitution" and insure to them the procedural fairness which is the necessary condition of full enjoyment of substantive rights.

The interest which we advance in this case was perhaps best summarized by Justice Frankfurter in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 171-72 (1951) (concurring opinion).

> "No better instrument has been derived for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling so important to a popular government that justice has been done."

Statement of the Case

This case involves a constitutional challenge to an Ohio statute and school district regulations which permit public school students to be suspended from school for 10 days without a hearing. Appellees, and the class they represent, are public school students who were suspended pursuant to the authority of the challenged statute and regulations.

A three-judge district court, in an unreported opinion, declared the statute unconstitutional as a violation of the due process clause of the Fourteenth Amendment, and ordered the records of appellees' suspensions expunged.

ARGUMENT

Introduction

It is a fundamental principle of our system of government that, before being deprived of an interest protected by law, a person must be given "an opportunity to be heard respecting the justice of the judgment sought." *Hagar* v. *Reclamation District*, 111 U.S. 701, 708 (1884). The application of that principle to school affairs is important not only because the state is obliged to use fair procedures in dealing with all its citizens, but because schools "are educating the young for citizenship." *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 637 (1943). The effect of "sporadic and discretionary enforcement of unreasonable regulations," as one circuit court has observed, "is more likely to breed contempt of the law than respect for and obedience to it." *Jackson* v. *Godwin*, 400 F.2d 529, 535 (5th Cir. 1968). The court was speaking of the effect upon prisoners of arbitrary discipline procedures, but the lesson for this case is apparent. At issue here is whether schools will be permitted "sporadic and discretionary enforcement" of their rules. At stake may be whether students will enter society with respect or contempt for the law.

Students Are Entitled to a Fair Opportunity to Be Heard Before They Can Be Deprived of Their Right to Attend School

"The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protections of libery and property." *Board of Regents* v. *Roth*, 408 U.S. 564, 569 (1972). The

interest which invokes due process protections may derive from the Constitution or state law, may be denominated a right or a privilege, or may be categorized as liberty or property. Whatever its source, whatever its label, if the deprivation is "significant," due process protections attach. *Boddie* v. *Connecticut*, 401 U.S. 371 (1971). Education, by the unanimous agreement of the lower federal courts, is such an interest.[2]

The open question, then, is not whether or not education is an interest whose deprivation must be preceded by due process. Rather, the question is how much due process must accompany how much deprivation. Or, put another way, some due process is commanded by "the nature of the interest at stake," *Board of Regents* v. *Roth*, *supra*, 408 U.S. at 571; what will vary in the particular situation is "the form of hearing required," *id.* at 570.

Deprivations of education, ranging from suspensions of varying lengths to permanent expulsion, are a routine form of punishment in the schools. Appellant school authorities, however, prefer to speak euphemistically of "acting to preserve order and discipline" (Brief of Appellants, p. 21), hinting that they are engaged not in punishment but in an educational function with which the courts should not become involved. Regardless, discipline—such as suspension from school—is imposed upon students who are accused of failing to obey the rules, thus requiring a finding that a rule has been broken and that the accused student is culpable. That fact-finding process must be procedurally fair if the result—whether called discipline or punishment—is the deprivation of a protected interest.

[2] See, for example, cases cited in the opinion of the court below. See also, Levine, Divoky and Cary, *The Rights of Students*, Ch. IV (1973).

The "formality and procedural requisites," *Boddie* v. *Connecticut*, *supra*, 401 U.S. at 378, of the fact-finding process may vary in accordance with the extent of deprivation, but what is essential is that the hearing be held "at a meaningful time and in a meaningful manner." *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965). Naturally, the most meaningful time for a hearing which will determine the propriety of punishment is prior to its imposition. That fundamental principle of due process, which this Court has called its "root requirement," is generally applicable "except for extraordinary situations. . . ." *Boddie* v. *Connecticut*, *supra*, 401 U.S. at 379. With the exception of such extraordinary situations,[3] elemental fairness demands that a hearing precede suspension from school.

Appellants suggest that this analysis is inapplicable because no "grievous loss," *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring), justifying due process protections, was suffered by the suspended students. They point in particular to the fact that the students' academic careers seemingly did not suffer.

Several answers suggest themselves. First, plaintiffs sought and obtained a declaratory judgment against a statute which may be applied to many other students, some of whom will presumably suffer more substantial academic consequences than did appellants. Second, as the court

[3] One district court suggested that such a situation might arise "when the misconduct is so gross and the atmosphere of the school so tense that substantial disruption is highly probable unless instant expulsion is effected." *Fielder* v. *Board of Education*, 346 F. Supp. 722, 729 (D. Neb. 1972). However, even such limited departures "from the accepted standards of due process [are] capable of grave abuses," *In re Oliver*, 333 U.S. 257, 274 (1948), and should be narrowly limited.

below noted, there are other consequences, psychological and social, which a suspended student suffers.[4] Third, the permanent entry on a student's record of a suspension may adversely affect future educational and career opportunities.[5] Finally, to miss ten days of instruction is itself a significant deprivation. Ohio, like most other states, has enacted laws which compel school attendance and punish truancy, presumptive evidence of a judgment that daily classroom instruction is valuable. If a child's daily attendance at school is so important that it will be compelled by law, surely the state will not now be heard to characterize a 10-day prohibition against attendance as of only minor consequence.

The state tries to avoid the harsh realities of a suspension by claiming that it is an aspect of "management and control of the internal affairs of a system it had established" (Brief of Appellants, p. 21). The theme is a familiar one. Institutions have always opposed procedural safeguards on the grounds that they interfere with "internal affairs." Thus, with little variation on the theme, due process claims have been resisted by, among others, those

[4] As one district judge has observed, "suspension is a particularly humiliating punishment evoking images of the public penitent of medieval Christendom and colonial Massachusetts, the outlaw of the American West and the ostracized citizen of classical Athens. Suspension is an officially sanctioned judgment that a student be for some period removed beyond the pale." *Sullivan* v. *Houston Independent School District*, 333 F. Supp. 1149, 1172, *rev'd on other grounds*, 475 F.2d 1071 (1973), cert. denied —— U.S. —— (1973). Compare Justice Brennan's observation in *Abington School District* v. *Schempp*, 374 U.S. 203, 292 (1963) (concurring): " . . . the excluded pupil loses caste with his fellows, and is liable to be regarded with aversion, and subjected to reproach and insult. . . . "

[5] Compare *Street* v. *New York*, 394 U.S. 576, 579 n. 3 (1969) (collateral consequences of a criminal conviction).

in charge of colleges, *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961); welfare benefits, *Goldberg* v. *Kelly*, 397 U.S. 254 (1970); juvenile courts, *In re Gault*, 387 U.S. 1 (1967); parole, *Morrissey* v. *Brewer*, 408 U.S. 471 (1972); public housing, *Escalera* v. *New York Housing Authority*, 425 F.2d 853 (2d Cir. 1970); and prisons, *Sostre* v. *McGinnis*, 442 F.2d 178 (2d Cir. 1971); *Nolan* v. *Scafati*, 430 F.2d 548 (1st Cir. 1970); *Landman* v. *Royster*, 333 F. Supp. 621 (E.D. Va. 1971).

The arguments made on behalf of those institutions warn of similar consequences: cumbersome procedures will drastically impair the efficiency of the institution. But procedural guarantees are now afforded by each of those institutions, and they continue to function—perhaps even better; certainly more fairly.

The schools too will survive if suspension procedures are required to be fair, and not merely efficient. Insofar as the state is genuinely concerned with emergency situations, the due process principles discussed above permit them to remove a student temporarily "if the school is in the throes of a violent upheaval," provided a hearing is held at the "earliest opportunity." *Pervis* v. *La Marque Independent School District*, 466 F.2d 1054, 1058 (5th Cir. 1972). Thus, there is no interference with the state's ability to respond to genuine threats to its educational function.

If the concern of school officials is with the burdens of formal proceedings, they have it in their power, in accordance with the principle that the nature of the hearing will "vary depending upon the circumstances of the particular case," *Dixon* v. *Alabama State Board of Education, supra*, 294 F.2d at 158, to minimize those burdens. If they wish to afford less formal procedures, they can simply curtail

the extent of deprivation suffered by the suspended student. Thus, the period of the suspension could be limited to the duration of the emergency, alternative instruction in some form could be provided,[6] make-up work could be offered and academic penalties and permanent records eliminated.[7] In so doing, the state would be exercising "the least possible power adequate to the end proposed." *Anderson* v. *Dunn*, 6 Wheat (U.S.) 204 (1821).

Another way for the state to reduce the burdens of giving suspended students due process is to substantially limit the number of situations in which suspensions are permitted. When school officials permit suspension for violation of *any* school rule or regulation, as do appellees, it is apparent that students may be suspended for conduct which presents no conceivable threat to educational activities. If procedural requirements for such suspensions proved too burdensome, the state might well explore alternative means of dealing with that conduct and limit the suspension power to emergency situations.[8]

[6] One federal court has required that "alternative educational opportunities" be provided for suspended students. *Mills* v. *Board of Education of the District of Columbia*, 348 F. Supp. 866 (D. D.C. 1972). See also, New York City Board of Education By-Laws, section 90, subdivision 42 (App., *infra*, p. 19): "Plans shall be made to provide the maximum educational experience for the [suspended] student."

[7] The fact that all suspensions, of whatever duration, become a permanent entry in a student's record, argues for due process guarantees regardless of the length of the suspension. It is the permanent record of the suspension which is perhaps the most disabling of its features. See, *e.g.*, *Vail* v. *Board of Education of Portsmouth School District*, 354 F. Supp. 592, 603 n.4 (D.N.H. 1973).

[8] The by-law of the New York City Board of Education, section 90, subdivision 42 (App., *infra*, p. 19) is illustrative. It calls suspensions an "emergency power," and it allows suspensions only when the student's behavior "prevents the orderly operation

If the state does not choose to forego use of the suspension power in non-emergency situations, it can make no claim that application of due process principles to student suspensions will diminish its power to safeguard its interests. As one commentator has observed,

> "the institutionalized control which schools impose on students often not only fails to serve an educational purpose but in principle does the opposite . . . . In an effective educational setting most of the objectionable behavior of students—their idiosyncratic tendencies, their expressions of opinions on many subjects, the disturbances and distractions caused by their actions, their statements and even their appearance—is actually grist for the educational mill." Ladd, "Allegedly Disruptive Student Behavior and the Legal Authority of School Officials," 19 *J. Pub. L.* 209, 236 (1970).

We think the state has substantially exaggerated the adverse consequences which would flow from due process suspension hearings. It is, in this regard, worth noting that many of the largest school districts in the country, including New York City,[9] San Francisco, Philadelphia and

of the class or other school activities or presents a clear and present danger of physical injury to school personnel or students." In addition, the suspension must be reviewed every day by the principal and may last only as long as the emergency lasts.

[9] The New York City Board of Education has expressed its commitment to due process in these terms:

> "The constitutional guarantees for students do not stop at the school house door and must be assiduously protected for all who enter. Likewise, a student, like all others in this society, is presumed to be innocent of charges until proved guilty by the evidence produced, surfaced and proved in a fair and impartial hearing, whether administrative or judicial." *Matter of Castelli*, New York City Board of Education (May 29, 1970).

Seattle, have adopted elaborate procedural safeguards in connection with student suspensions. In addition, the Commissioners of Education in New York and New Jersey, the highest education officials in those states, have required due process protections in student suspension hearings.[10]

We might be inclined to agree with Mr. Justice Black, dissenting in *Tinker*, that the federal courts should not be in the business of running the approximately 23,000 school districts throughout the country. That hardly means that everything school officials do in the name of education is beyond judicial scrutiny. *Barnette* v. *West Virginia State Board of Education, supra.* School officials have an important and valuable social role to perform, and surely intend to do nothing but good.[11] Nevertheless, this Court's caution of several years ago is worth recalling: "unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure." *In re Gault*, 387 U.S. 1, 18 (1967).

We are not unmindful of the feeling, shared by many, that our schools are a particularly unlikely place for the imposition of due process guarantees. Parents, students, teachers, and administrators understandably prefer to see themselves as involved in a common effort rather than as adversaries in formal proceedings. But when a student is accused of misconduct, *and* the school officials seek to suspend him, they are adversaries, a fact not changed by foregoing a due process hearing. We emphasize the fact of suspension as critical to the adversary relationship because

[10] *Matter of Rose*, 10 Ed. Dept. Rep. 4 (1970); *Scher* v. *Board of Education of West Orange*, 1969 School Law Dec. 92.

[11] For a discussion of the doctrine of *in loco parentis*, see Buss, "Procedural Due Process for School Discipline: Probing the Constitutional Outline," 119 *U. Pa. L. Rev.* 545, 559-62 (1971).

there is nothing in the due process clause that prevents school officials from utilizing procedures which deal with misconduct non-punitively.[12] Nothing we have said need limit or formalize those procedures. When, however, the school responds by suspending a student and depriving him of education, it becomes his adversary as surely as if it sought to put him in jail, evict him from public housing, or terminate his welfare benefits.[13] Given this Court's recognition of the critical role of education in our society, its impact on his future life may even be more severe. Such consequences should not be visited without procedural regularity.

In *Tinker*, this Court spoke of the "sort of hazardous freedom . . . that is the basis of our national strength. . . ." An important aspect of that "hazardous freedom" is due process of law. Like free speech, it carries some risks; it

[12] In New York City, for example, the Circular (App., *infra*, pp. 15-18) governing pupil suspensions suggests the following procedures:

> "All possible alternatives should be explored to help children resolve their adjustment problems before suspension is considered. In pursuit of this objective the school will assume the responsibility to refer pupils and their parents for specialized help. . . ."
>
> "Each principal and teacher has a responsibility to identify pupils in need of help and to enlist the aid of the Board of Education's pupil personnel services as well as the resources available in the community. . . ."
>
> "When a serious problem arises regarding a pupil's behavior, a presuspension conference attended by the appropriate personnel should be called at an early stage in an effort to resolve the problem. It is expected that the parent will be included in efforts to help the pupil in school adjustment."

[13] "When a school board undertakes to expel a public school student, it is undertaking to apply the terrible organized force of the state, just as surely as it is applied by the police, the courts, the prison warden or the militia." *Breen* v. *Kahl*, 296 F. Supp. 702 (W.D. Wis.) *aff'd*, 419 F.2d 1034 (7th Cir. 1969).

also forms part of "the basis of our national strength." It is indisputably a fundamental part of our heritage. As Justice Brandeis observed, "in the development of our liberty, insistence upon procedural regularity has been a large factor." *Burdeau* v. *McDowell,* 256 U.S. 465, 477 (1921) (dissenting).

Regrettably, the perception by most public school students appears to be that "procedural regularity" is a concept that has little reality for them in the day-to-day operation of their schools. A recent study funded by the United States Office of Education, the summary report of which was entitled *Civic Education in a Crisis Age* (1970),[14] concluded that

> ". . . a large majority of the students feel they are regularly subjected to undemocratic decisions. These are seen as unilateral actions by teachers and administrators that deny fundamental rights of persons to equality, dissent, or due process . . .
>
> . . . the great majority of students in secondary schools —'the supposedly silent majority'—is becoming increasingly frustrated and alienated by school. They do not believe that they receive individual justice or enjoy the right to dissent, or share in critical rule-making that affects their lives.
>
> If this is true, then our schools may be turning out millions of students who are not forming a strong and reasoned allegiance to a democratic political system, because they receive no meaningful experience with such a democratically-oriented system in their daily

[14] The study was performed by the Center for Research and Education in American Liberties of Columbia University and Teachers College.

> lives in school. For them we should remember, public school is the governmental institution which represents the adult society in its most direct and controlling aspect. If we do not teach the viability of democratic modes of conflict-resolution, and win respect for these as just and effective processes, we will lose more and more potential democrats. If we mean to alter this, we had better look with painful attention at what our children are saying about their perceptions of schools, for it is these perceptions, and not our wishful thinking about what schools should or might be, that are fundamental in the citizenship education now taking place in American secondary education." *Id.* at 1-2.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be affirmed.

Respectfully submitted,

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June 1974

APPENDIX

BOARD OF EDUCATION OF THE CITY OF NEW YORK
OFFICE OF THE SUPERINTENDENT OF SCHOOLS

June 24, 1970

TO ALL SUPERINTENDENTS, PRINCIPALS, DIRECTORS, HEADS OF BUREAUS AND CHAIRMEN OF LOCAL SCHOOL BOARDS

Ladies and Gentlemen:

PUPIL SUSPENSION

I. Introduction

This circular supersedes Special Circular No. 36, dated November 12, 1969, and all previous circulars and references on the subject of pupil suspension, such as Chapter 8 of the Manual of Attendance Procedures for Principals and Chapter 4 of the Manual of Procedures of the Bureau of Child Guidance. The suspension of a pupil required to attend school is a serious step. The parent has the responsibility for the pupil's regular attendance and orderly behavior while attending school. It is also the responsibility of the parent to maintain the pupil in proper mental and physical condition. The school has the responsibility to accept and instruct all educable pupils, and as such, must take all possible steps in the educative process to prevent the suspension of children. However, it must be recognized that for a variety of reasons some pupils cannot maintain themselves or be maintained in a classroom setting.

II. Prevention Procedures

A. General Considerations

All possible alternatives should be explored to help children resolve their adjustment problems before suspension is considered. In pursuit of this objective the school will assume the responsibility to refer pupils and their parents for specialized help.

If after all available remedial procedures have been applied, a pupils remains disruptive or maladjusted to the extent that he does not profit from instruction or that he prevents other pupils from learning, his educational placement must be re-evaluated. It is recognized that authoritative steps may be necessary, but the approach should be supportive. Each principal and teacher has a responsibility to identify pupils in need of help and to enlist the aid of the Board of Education's pupil personnel services as well as the resources available in the community. In addition, the principal should have available a sufficient record indicating that the pupil was recognized to be in need of extra support and the specific steps taken with parents and staff to help the child. The success or failure of these steps and other pertinent data should be an essential part of the record. However, there may be instances when the severity of a pupil's action will necessitate his suspension even though there be no previous history of disruptive behavior. The suspension procedure must be considered a part of the continuous educational guidance program for the child. Principals', community superintendents' and supervising assistant superintendents' conferences, in relation to suspension, provide an opportunity for parents, teachers, counselors, supervisors, et al., to plan educationally for the benefit of the child.

B. Principal's Conference to Prevent Suspension

1. When a serious problem arises regarding a pupil's behavior, a presuspension conference attended by the appropriate personnel should be called at an early stage in an effort to resolve the problem. It is expected that the parent will be included in efforts to help the pupil in school adjustment.

2. The principal should notify the parent to attend the presuspension conference by a personal letter. (Personal letters are preferable to form letters.) The following letter is suggested, only:

"I am very anxious to meet with you to discuss a serious problem that your child, - (Name) - is having. Would you please come in to see me on - (Date-Time-Place) - so that we can plan ways to solve the problem.

I must stress the urgency of our arriving at a joint solution so that we may avoid suspension or other alternatives."

Yours very truly,

3. Inasmuch as this is a guidance conference held for the purpose of providing an opportunity for parents, teachers, counselors, supervisors, et al., to plan educationally for the benefit of the child, attorneys seeking to represent the parent or child may not participate.

III. Suspension Procedures

A. Principal's Suspension

1. The school principal shall have emergency power to suspend a student from participation in regular school activity when he determines that the overt behavior of that student prevents the orderly operation of the class or other activities or presents a clear and present danger of physical injury to school personnel or students. Such suspension shall be reviewed daily by the principal and shall last only so long as such conditions continue to prevail, but in no case shall exceed five days. No student shall be placed under emergency suspension pursuant to this section twice consecutively or more than twice in one school year. (Note: the above is an excerpt from the Board of Education resolution adopted October 22, 1969.) The clear intention of the suspense procedure is that suspension for a period beyond five days shall have been preceded by a hearing, consequently a principal's suspension may not be followed consecutively by a superintendent's suspension.

(Continued on Reverse Side)

III. Suspension Procedures - Continued

2. Whenever a pupil under the care of the Bureau of Child Guidance, or another agency or therapist is to be suspended, the principal shall consult with the Bureau of Child Guidance, or agency or therapist prior to the suspension. The final decision remains with the principal.

3. The principal will remove the pupil from his class and must keep him in school under supervision until the close of the school day or the arrival of the person in parental relation to the pupil.

4. The student's parents and community superintendent or the supervising assistant superintendent shall be immediately advised of any emergency suspension by telephone or telegram and the reasons therefor. The parents shall also be informed by certified mail, posted on the day of suspension, that their child has been suspended, the specific reasons for the suspension and that their presence is requested at school for a conference at which time the parent will be permitted the opportunity to discuss the findings leading to the student's removal from class, to question the complainants and to present additional information. The following format should be used: (N.B. A personal letter is suggested rather than a duplicated form.)

"I regret that it has become necessary to suspend your child from school until _____ (Set date not to exceed 5 days), because

(State specific reason with clarity and definiteness)

It is important that you call or write to my office immediately to make an appointment for a mutually convenient time. At that time, you will have the opportunity to examine and discuss the relevant facts with all the parties concerned, so that we may plan together for your child's return to school If you wish, you may bring two persons. They may be attorneys but may act in the capacity of advisors only. During the period of suspension, your child should be kept at home during school hours."

A copy of the Appeals Procedures must be enclosed with suspension letter to the parents.

5. The conference will be conducted by the principal who will explain the basis of his decision to suspend and allow the parent and student to present their side of the story. According to state law, the person in parental relation may ask questions of complaining witnesses. Parental responsibility should be emphasized. According to the By-laws of the Board of Education, at the conference the parent and the principal may each have the assistance of up to two additional persons unless both parties agree to the presence of more persons.

6. Every effort should be made to secure the parent's attendance at the conference. If the person in parental relation to the child fails to respond or appear, the principal may refer the case to the community superintendent or supervising assistant superintendent who shall take such action as he may determine. A conference cannot take place unless the parent or person in parental relation is present. A guidance approach should be emphasized and maintained throughout the conference which should not be allowed to become an adversary proceeding.

7. A pupil suspended by the principal must be returned to the school by the principal no later than 5 school days after the day of the principal's suspension. A permanent record of the guidance conference held in connection with the suspension will be maintained by the principal.

8. A pupil suspended by the principal under this section may not be suspended more than twice during the school year. These may not be consecutive periods of suspension.

9. At the end of every attendance reporting period of the school year, each principal will send to the Community Superintendent or Supervising Assistant Superintendents:

The name of each pupil suspended
The reason for suspension
Date suspended
Date of principal's hearing
Date of pupil's return to class
Number of school days suspended

10. The suspended pupil will remain on the register of his school and will be marked absent in the roll book during the period of suspension.

B. Community Superintendent's or Supervising Assistant Superintendent's Suspension

1. When a principal believes that a student is so disruptive as to prevent the orderly operation of classes or other school activities, presents a clear and present danger of physical injury to other students or school personnel, or that he will benefit from an alternative educational experience, he shall refer such cases to the community superintendent or supervising assistant superintendent, giving him a brief summary of the student's behavior.

2. If the Community Superintendent/Supervising Assistant Superintendent decides on the basis of the information provided by the principal that suspension procedures are warranted, he shall schedule a hearing on notice of not more than five school days by certified letter to the parents of the student and should hold such hearing on or before the fifth school day of suspension. The notice shall designate the date, time and place of the hearing and shall contain a statement setting forth the parent's right to be represented by counsel and a statement of the specific behavior of the student. Since the decision to suspend is the responsibility of the community superintendent/supervising assistant superintendent, he is required to send the letter of suspension. (The following format is suggested only)

Suggested Format :

Dear

At the request of , Principal of and in view of charged serious misbehavior, your (daughter/son) has been suspended from school. The allegations of misbehavior include the following:

(State specific reasons with clarity and definiteness)

A guidance conference and suspense hearing has been scheduled for:

DATE:
TIME:
PLACE:
PHONE:

It is most important that you attend this conference and that you bring your (daughter/son) with you. In accordance with State Education Law, you may if you wish, have counsel accompany you to this conference. You or counsel have the right to question witnesses.

During this period of suspension, is not to come to school and should be kept home during school hours.

Yours very truly,

_____

John Doe
Community Superintendent or
Supervising Assistant Superintendent

A copy of the Appeals Procedure must be enclosed with suspension letter to the parents.

3. On the day that the principal telephones the district office and the community superintendent/supervising assistant superintendent agrees to schedule a suspense hearing for the pupil, the pupil is to remain in school until the close of the day.

It is the responsibility of the principal to utilize every available means to notify the parent or person in parental relationship on that day that the community superintendent/supervising assistant superintendent is suspending the pupil on the basis of information supplied by the school.

The parent or person in parental relationship may request an extension of time for the date of the hearing. The time extension may be granted by the community superintendent/supervising assistant superintendent. If the time extension is granted, the community superintendent/supervising assistant superintendent should notify the parent by telegram and/or certified mail of the new date, time and place of the hearing and that the child is to be kept out of school during the suspension.

4. The hearing shall be conducted in full accordance with the statutory requirements which provide that no pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil.

The important purpose above and beyond meeting the statutory requirements is to provide an opportunity for parents, teachers, supervisors, et al., to plan educationally for the benefit of the child. The community superintendent or supervising assistant superintendent shall make a written statement of his findings, together with the determination thereof. Such determination may include among other appropriate measures the pupil's reinstatement, transfer to another school, referral for placement in a School for Socially Maladjusted Children, referral to the Bureau of Child Guidance or other suitable professional agency for study and recommendation.

In certain suspension cases where the recommendation is that the pupil be placed in an alternative educational institution, pending such placement, it shall be the responsibility of the Community Superintendent or supervising assistant superintendent to provide for some other means of instruction, such as home instruction.

Suspension should take place only after a finding that the continued attendance of the pupil at his former situation prevents the orderly operation of the classroom or other school activity or presents a clear and present danger of physical injury to students or other school personnel. Every effort should be made to secure the parent's attendance. If the parent fails to appear the community superintendent or the supervising assistant superintendent shall reschedule the hearing, but may suspend a pupil pending the rescheduled hearing where he finds that the continued attendance of the pupil at his former educational situation prevents the orderly operation of the classroom or other school activity or presents a clear and present danger of physical injury to students or to other school personnel.

5. The suspended pupil will remain on the register of his school and will be marked absent in the roll book during the period of suspension. Appropriate notation of the suspension should also be recorded on the cumulative record.

(Continued on Reverse Side)

6. A suspended pupil who moves to another school district within the City shall be placed immediately upon the register of the school serving the new residence and suspension shall be continued. All pertinent information will be forwarded to the community superintendent or supervising assistant superintendent of the new district, who will make final disposition of the case.

7. At the end of each attendance reporting period, the community superintendent or supervising assistant superintendent will forward to the Superintendent of Schools a report on pupil suspensions, including the following:

a) A summary of the community superintendent's or supervising assistant superintendent's suspensions and descriptive data regarding disposition and status as well as time elapsed since the date of suspension.

b) The number of principal suspensions and the duration of each suspension.

IV. Regulations Governing Appeals

If, after meeting with the school principal, the parent believes that the suspension was not justified, he may, for the elementary and junior high schools, appeal in the first instance to the community superintendent and in the second instance from the community superintendent to the community school board and then to the Central Board of Education to review the suspension decision.

Appeals affecting high school and special school students should be appealed in the first instance to the supervising assistant suaperintendent and in the second instance to the Central Board of Education.

After a decision on an appeal is reached, the parent shall be informed of the decision in writing and the reasons therefor. In any case, where the supervising assistant superintendent, the community superintendent, the community school board or the Central Board of Education find that the action of the student did not justify his suspension from classes, the student shall be exonerated and any record of disciplinary proceedings against him shall be expunged from his record.

Very truly yours,

IRVING ANKER
Superintendent of Schools (Acting)

BY-LAWS OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, SECTION 90, SUBDIVISION 42—SUSPENSIONS

42. The following procedures shall exclusively set forth the emergency suspension powers of a school principal pursuant to paragraphs (b) and (d) of subdivision 6 of section 3214 of the Education Law.

1. The school principal shall have emergency power to suspend a student from participation in regular school activity when he determines that the overt behavior of that student prevents the orderly operation of the class or other school activities or presents a clear and present danger of physical injury to school personnel or students. Such suspension shall be reviewed daily by the principal and shall last only so long as the conditions continue to prevail, but in no case shall exceed five days. No student shall be placed under emergency suspension pursuant to this section twice consecutively or more than twice in one school year.

2. The student's parents and the supervising assistant superintendent shall be immediately advised of any emergency suspensions by telephone or telegram and the reasons therefor. The parents shall also be informed by certified mail, posted on the day of suspension, that their child has been suspended, the reasons for the suspension and that their presence is requested at school for a conference, at which time the parent will be permitted the opportunity to discuss the findings leading to the student's removal from class, questioning the complaints and presenting additional information. At the conference the parent and the principal may each have the assistance of up to two other people unless both parties agree to additional persons.

Plans shall be made to provide the maximum educational experience for the student. A copy of the certified letter to the parent shall be forwarded also to the supervising assistant superintendent. When suspended from the classroom, the student shall remain under the supervision of the principal until the end of the school day or until such time as the parent comes to claim his child.

3. If, after meeting with the school principal, the parent believes that the suspension was not justified, he may first appeal to the supervisiing assistant superintendent and then to the community school board or to the Central Board of Education to review the suspension decision. The parent shall have the right to present evidence through either oral or written procedures.

4. After a decision on an appeal is reached, the parent shall be informed of the decision in writing and the reasons therefor. In any case where the supervising assistant superintendent, a community school board or the Central Board of Education finds that the action of the student did not justify his suspension from classes, the student shall be exonerated and any record of disciplinary proceedings against him shall be expunged from his record.

Supreme Court, U. S.
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IN THE

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OCTOBER TERM, 1973

No. 73-898

NORVAL GOSS, *et al.*,

Appellants,

—v.—

EILEEN LOPEZ, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

BRIEF OF THE NATIONAL COMMITTEE FOR CITIZENS IN EDUCATION; THE NATIONAL EDUCATION ASSOCIATION; AND THE EDUCATION LAW CENTER, INC., AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

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May, 1974

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Other Authorities:

W. Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline,* 119 U. Pa. L. Rev. 545 (1971) 19, 23

Education USA, Vol. 16, No. 25 (February 18, 1974) .. 27

P. Lines, *The Case Against Short Suspensions,* Inequality in Education, No. 12 (July, 1972) 26

National Education Association, Code of Student Rights and Responsibilities (1971) 24

Pittsburgh Board of Public Education, Procedures for Dealing with Student Misconduct (1971) 25

Report of the Senate Select Comm. on Equal Educational Opportunity, "Toward Equal Educational Opportunity," 92d Cong., 2d Sess. (1972) 27

Seattle School Board, Statement of Rights and Responsibilities (1970), reprinted in Administrator's Notebook, Vol. XX, No. 6 (February, 1972) 25, 26

Southern Regional Council, The Student Pushout: Victims of Continued Resistance to Desegregation (1973) 27

C. Wright, *The Constitution on Campus,* 22 Vand. L. Rev. 1027 (1969) 27

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CONSENT TO FILING

This Amicus brief is filed, pursuant to Supreme Court Rule 42(2), with the written consent of all parties to the case.

INTEREST OF *AMICI CURIAE*

National Committee for Citizens in Education. NCCE is a national public interest group in education with a broad based citizen membership. Its predecessor organization, the National Committee for Support of the Public Schools, was founded in 1962 by a group of distinguished Americans, including Harry S. Truman, Agnes B. Meyer, James B. Conant and Omar V. Bradley, to focus public attention on the financial needs of the schools. NCCE was reconstituted and renamed in 1973 to reflect its transformation to a mass membership organization committed to building an effective citizen voice in education.

NCCE seeks to rekindle the public interest in education, to increase citizen participation in education decisions, to redress the balance of control. NCCE is committed to public education as an essential institution of our democracy and serves as a mechanism for an informed public to speak out and act on the major education issues before the nation. Because it believes that basic rules for just consideration of educational controversies must be established, the National Committee supports the right of children who are to be suspended to have a hearing.

National Education Association. The NEA, founded in 1857 and chartered by a special act of Congress in 1906, is the nation's oldest and largest organization of educators. It currently has more than 1,400,000 members. The NEA's purposes, as set forth in its charter, are to "elevate the character and advance the interests in the profession of teaching and to promote the cause of education in the United States." To this end, the NEA is dedicated to the

protection of the constitutional rights of both teachers and students.

The specific question presented in this case is whether a public school may constitutionally suspend a student without notice, hearing, or any other procedural protection. NEA's code of student rights and responsibilities, produced in 1971 by a special task force selected for that purpose, provides detailed procedural rights for any student threatened with an expulsion or suspension for longer than one day. The decision of this Court will have a significant impact on the extent to which such procedural rights will be made available in public schools in the years ahead.

Education Law Center, Inc. The Education Law Center is a public interest law center, incorporated in 1973 as a New Jersey Not-for-Profit Corporation. The Center is primarily active in the States of New Jersey and Pennsylvania in helping parents and students to realize the promises of equal educational opportunity and quality education for all. To this end, the Center engages in litigation of cases with broad educational policy implications, and provides technical assistance to parent and student organizations, as well as other agencies.

As the only public interest law center dedicated exclusively to the education law field, the Education Law Center is vitally interested in the continuing role of the federal courts in this area. The Center is involved in many cases presenting both substantive and procedural aspects of school discipline, which, like this one, require that a balance be struck between the duty of the State to operate the schools and the constitutional rights of individual children.

STATUTE INVOLVED

Section 3313.66 of the Ohio Revised Code provides, in relevant part, that:

> "The superintendent of schools of a city or exempt village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school for not more than ten days. . . . Such superintendant, executive head, or principal shall within twenty-four hours after the time of . . . suspension, notify the parent or guardian of the child, and the clerk of the board of education in writing of such . . . suspension including the reasons therefor . . . ."

Section 1010.04 of Columbus Public Schools Administrative Guide provides that:

> "Pupils may be suspended . . . from school in accordance with the provisions of Section 3313.66 of the Revised Code."

QUESTION PRESENTED

Does the due process clause of the Fourteenth Amendment to the United States Constitution prohibit a public school system from suspending students from school for one or more periods of up to ten days without any type of notice or hearing (a) prior to such suspension, where the student's alleged conduct does not present a threat of disrupting school affairs; or (b) promptly after the suspension is imposed, where it is believed that the student's alleged conduct does threaten such a disruption?

STATEMENT OF FACTS

The full factual background of the case and the opinion of the court below appear elsewhere. Nevertheless, in view of the contentions of the Appellants and the Amici supporting them, we believe it important to set out certain of the facts in some detail.

In February, 1971, a number of public schools in the City of Columbus, Ohio, were affected by racial disturbances. The precise cause of such disturbances does not appear from the record, but they seem to have stemmed from disputes involving Black History Week in a number of high schools. (A. 127). As a result, and purporting to act under Section 3313.66 of the Ohio Revised Code quoted above, the principals and assistant principals of Central and Marion-Franklin High Schools and McGuffey Junior High School summarily suspended a large number of black students—at least 75 at Central High School alone. (A. 120). All of the students received zeros for the work missed during their suspensions (A. 164-65); several of them were given punitive transfers as a result of their suspensions (A. 130, 151); and some of the students had permanent notations of their suspensions made in their school records (A. 219, 244, 256). None of the students were given the benefits of even the most rudimentary procedural protections. Some of them were never even told why they were suspended.

The suspensions of the four plaintiffs who testified at the trial appear to be typical:

Dwight Lopez. In February, 1971, Dwight Lopez was a student at Central High School. On the morning of February 26, 1971, he had a free study period in the lunch-

room. While he was there, some black students came in and started overturning tables. Lopez testified that he and several of his friends thereupon walked out of the lunchroom; that he took no part in the disruptive activities; and that he did not violate any school rule. (A. 128).

In view of the disruptions at the school, the school day was ended early and all students dismissed during the morning. Later in the day, while Lopez was at home, his parents received a phone call from the principal of Central High School notifying them that Lopez had been suspended. No reasons were given. (A. 128-29). In addition, a letter dated the same day was sent to Dwight's parents by the principal. It stated, *inter alia*, that there had been a "continued problem in school for several days and today a group of students disrupted our complete school program. Dwight was in the group . . . ." (A. 190). Lopez and his parents were instructed to appear at the Board of Education on March 8 for the limited purpose of discussing "Dwight's future educational plans." (A. 193). When they did so, however, they were unable to get into the building because several hundred persons conducting a protest of Board policies were blocking the entrances. (A. 124). Lopez and his parents attempted to reschedule the meeting, but the school officials were always unavailable. (A. 122). Lopez was never allowed to return to Central High and on March 24, 1971, he was transferred from Central to the Adult Day School. (A. 193-94).

It seems, but is not entirely clear from the record, that Lopez was suspended from school because he was thought to have participated in the disruption in the school cafeteria. As a result of his suspension, which in fact lasted nearly one month, he was transferred from Central High School to the Adult School. Despite the fact that Lopez

denied that he participated in any disruptive activity, he was never given any opportunity, either before or after the suspension, for a hearing on the merits of his suspension. Furthermore, there was obviously no emergency requiring Lopez to be removed from the school grounds since school had been let out for the day and he was at home when he was notified of his suspension.

Betty Crome. In March, 1971, Crome was a student at McGuffey Junior High School. On March 3, 1971, there were disturbances at school, and a number of students were blocking the halls and making it impossible for the students who wished to reach their assigned classes to do so. Crome testified that in order to avoid the disturbances she and a number of other students went onto the school playground. The principal appeared on the playground and told the students assembled there to go home. Crome then departed for home with other students. Linden McKinley High School was along her route and, as she stopped there on her way home, she was arrested by the Columbus police. No charges were ever filed and she was immediately released to her mother. (A. 131-33).

Later the same day, Crome's mother was informed by telephone that Crome was suspended from school. (A. 132-33). Shortly thereafter, Crome's mother received a form letter dated March 3, from the principal of McGuffey stating that "your son/daughter Betty J. Crome has been temporarily suspended from McGuffey Junior High." (A. 202). No reasons were given at that time, or at any other time, for the suspension, nor is there anything in the record in the present case which indicates why Crome was suspended. It does appear clear, however, that since she was not on the school grounds at the time she was informed of her suspension, there was obviously no emergency re-

quiring an immediate suspension to remove a disruptive influence.

Deborah Fox. In March, 1971, Deborah Fox was a tenth grade student at Marion-Franklin High School. She was suspended for twenty days and then subjected to a punitive transfer as a result of what were alleged to be her actions on March 10 and March 19, 1971. The underlying facts are in dispute. Fox testified that she did not do anything which violated any rule or regulation of the school; that she was suspended for two consecutive ten day periods by Mr. Kollmer, the Assistant Principal; that she was never given any reason for either suspension; and that Mr. Kollmer appeared emotionally upset during the day he first suspended her. (A. 148-51). Philip Fulton, the school Principal, gave contrary testimony at his deposition. Fulton stated that during the morning of March 10, Fox was disruptive, "loud and disrespectful" toward Mr. Kollmer, and that during the noon hour she was "still making negative comments" and told Kollmer that she "hated him." As a result of her "negative comments" during the noon hour, she was told to report to the administration office, and when she refused she was suspended. (A. 102-3). Kollmer wrote to Fox's parents stating that Fox had been suspended because she was "extremely defiant and disrespectful with the assistant Principal today." (A. 211).

Fulton testified that when the first suspension expired on March 19, 1971, and Fox returned to school with her parents for a conference, she repeated the same disrespectful attitude towards the Assistant Principal. (A. 104). Fox, on the other hand, testified that she and her parents were told about her second suspension immediately on their arrival for their meeting with the Assistant Principal on March 19, and that she made no disrespectful comments about the Assistant Principal. (A. 151). The letter of March 19 to Fox's parents from Kollmer, providing formal notice of the suspension, gives no reason for the suspension. (A. 212).

In any event, Fox was never allowed to return to Marion-Franklin and was given a punitive transfer to South High School on March 30, 1971. Despite the conflict in testimony, Fox was never given a hearing before or after her suspensions and transfer. In her permanent record appears the notation "3/15/71 suspended for student disruption." (A. 219).

Susan Cooper. In March, 1971, Susan Cooper was also a student at Marion-Franklin High School. On March 15, there was racial tension at Marion-Franklin. Cooper, pursuant to her mother's instructions, determined to leave the school grounds. She testified that she was unwilling to violate the school rules by leaving without an excuse, so she went to the attendance office to obtain official permission. There she talked to Kollmer who told her that she had to go to class. When she informed him that her mother had asked that she be allowed to go home if there were continuing tensions at the school, Kollmer told her "well, you are suspended anyway." (A. 138-39, 140-41). She then left the school, but she and her mother both returned to the school and waited to talk to Kollmer. He would not talk to them and ultimately they met briefly with Oscar Gill, another Assistant Principal. Gill told them that Cooper was suspended for ten days and that she could have a conference when she returned. (A. 141-42). The next day, Cooper's mother received a letter from Gill stating that she was suspended because she was "involved at the disturbance at school" and "showed a lack of respect for the principal." (A. 224). During the proceedings below, Fulton, the Principal of Marion-Franklin, stated in his deposition

that he had ordered Cooper to go to class, but that she refused and encouraged other students not to obey his order to go to class. (A. 110-11).

Prior to the commencement of this case, Cooper was never given a specific reason for her suspension. While she and her mother did speak briefly to the Assistant Principal upon her return to school, she was never given an opportunity to tell her side of the story. It is clear, however, that since Cooper was accused only of wanting to leave the school grounds to avoid the racial disturbances of March 15, there was no need to suspend her to remove any threat of disruption for which she was allegedly responsible.

While the precise factual details of the suspensions of the remaining plaintiffs, and of other students in Columbus, differ, there is no assertion that the defendants ever provided a hearing on the merits of the suspension to any suspended student. The lower court found as a fact that no such hearings were ever provided. (Jur. St. 64-65).

Many of those suspensions were made by administrative personnel under trying circumstances, where the administrators were beleaguered, if not, as the testimony indicated, actually emotionally upset. Mass suspensions under such conditions are hardly likely to reflect detached and unbiased judgments. The need for procedural protections under such circumstances is obvious. Yet, as noted, none of the students were ever—not before, not during, and not after the suspensions—given an opportunity to be heard. Indeed, many students were never given even the vaguest reason for their suspensions and in a number of other instances, the reasons given—such as "making negative comments"—hardly support suspensions at all.

Faced with what they not unreasonably regarded as unfair suspensions, the plaintiffs filed suit in the federal court seeking to have Section 3313.66 of the Ohio Revised Code declared unconstitutional insofar as it allows for suspensions with no procedural protections whatsoever. A three judge court was convened and a trial held. The undisputed testimony indicated that, in addition to the obvious hardships imposed upon students by a suspension—zeros for missed classwork, possible loss of credits, and the like (A. 164-65), the student is labeled a social deviant, with concomitant psychological harm, particularly where the student believes that his suspension was entirely unjustified. (A. 158-60, 172-76).

Based upon the record before it, the trial court concluded that Section 3313.66 of the Ohio Revised Code, and the procedures followed under that statute by the defendants, are violative of due process. (Jur. St. 65). The court held that informal procedures would be sufficient to satisfy the requirements of due process, but that such procedures must provide for written notice of the reasons for the suspension and an opportunity for the student to present a defense or an explanation of his or her conduct. The court held that such procedural protections must be accorded before the suspension is put into effect, unless the student's conduct is believed to be disruptive, in which case the hearing must be granted within three days after the suspension is effective. (Jur. St. 63-64). In view of the defendants' failure to follow minimally acceptable procedures in the present case, the court ordered all references to the suspensions involved in the present case deleted from the school records. (Jur. St. 65). From this holding, the defendants have appealed.

SUMMARY OF ARGUMENT

This Court has repeatedly concluded that education is of particular importance to children and to society as a whole, in part because of its singular relation to the continuance of our democratic institutions:

> "[Education] is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship." *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954).

See also *Wisconsin* v. *Yoder*, 406 U.S. 205, 213 (1972); *Meyer* v. *Nebraska*, 262 U.S. 390 (1923).

Students know that important lessons are learned from watching what is done by school personnel, not merely listening to what they say. Indeed, in pointing out the importance of public schools, this Court has stated that:

> "[T]hey are educating the young for citizenship. . . . [This] is reason for scrupulous protection of Constitutional freedoms of the individual [child] by the public schools, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 637 (1943).

Appellants and the Amici who support them would teach the children of this nation that our principles of government allow school authorities to suspend a student for substantial periods of time without giving the student a reason for the suspension or any opportunity to defend in even a rudimentary manner against the most egregious cases of mistake, bias, or overreaction by school authorities, even though serious personal consequences to the student may

follow. Indeed, Appellants would teach the nation's children that education is provided to serve the purposes of the State and the role of the student is merely incidental. (App. Br. 15).

Contrary to Appellants' position, however, constitutional rights do not stop at the schoolhouse door.

> "Quite to the contrary, '[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'" *Healy* v. *James*, 408 U.S. 169, 180 (1972); *Shelton* v. *Tucker*, 364 U.S. 479, 487 (1960).

Students, like all other members of our society, have a right to fair treatment as required by the Due Process Clause of the Fourteenth Amendment. When a student is suspended from a public school, the Due Process Clause mandates that he or she be given at least the minimal procedural protections ordered by the lower court.

ARGUMENT

THE COURT BELOW CORRECTLY HELD THAT SUSPENSION FROM SCHOOL WITHOUT NOTICE OR HEARING IS PROHIBITED BY THE DUE PROCESS CLAUSE

The Fourteenth Amendment provides in relevant part that no State shall

> "deprive any person of life, liberty, or property without due process of law . . . ."

The court below quite properly held that the plaintiffs' attendance at public school was an interest protected by the Due Process Clause. The court relied primarily on its con-

clusion that school attendance was embraced within the concept of liberty, but noted also that school attendance might well be considered a property interest. Applying the traditional principles of due process analysis, the court held that, with such rights involved, due process requires notice and an informal hearing prior to a suspension except in emergency situations, when notice and an informal hearing must be provided afterwards. The Appellants' practice, which provided no notice or hearing at any time or in any case, plainly meets no such test and is therefore unconstitutional.

I.

Plaintiffs' Uninterrupted Attendance at Public School Is an Interest Protected by the Due Process Clause

A. *Plaintiffs Have a Liberty Interest Within the Meaning of the Due Process Clause*

This Court's opinion in *Meyer* v. *Nebraska, supra,* held that

> "Without doubt, . . . [liberty] denotes not mere freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, . . . and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." 262 U.S. at 399.

See also *Board of Regents* v. *Roth,* 408 U.S. 564, 572 (1972).

Thus, in *Meyer* the Court held that a restraint on the teaching of foreign languages interfered with a protected liberty. Similarly, in *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925), the Court held that a state prohibition on a type of education (parochial schools) interfered with a

protected liberty. If a student's right to attend private school, or to learn a language, is a protected liberty, it would appear *a fortiori* that a student's right to attend public school at all must be a protected liberty.

Furthermore, this Court has held a number of times that where a charge imputing misconduct to a citizen is made, a protected liberty is involved:

> "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, [his liberty is involved]." *Wisconsin* v. *Constantineau,* 400 U.S. 433, 437 (1971).

See also *Board of Regents* v. *Roth, supra,* 408 U.S. at 573; *Wieman* v. *Updegraff,* 344 U.S. 183 (1952). We believe that without doubt the stigma which attaches from suspensions —discussed more fully at pages 19-20, below—has precisely the effect described by the Court in *Constantineau.* Thus, for this reason as well, a protected liberty is involved.

B. *Plaintiffs Have a Property Interest Within the Meaning of the Due Process Clause*

The Court's most recent analysis of the concept of property interests within the meaning of the due process clause is found in *Board of Regents* v. *Roth, supra.* There, the Court held that

> "To have a property interest in a benefit, a person clearly must have . . . a legitimate claim of entitlement to it. It is the purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. . . .
>
> Property rights, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules and understandings that stem from an independent source such as

> state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." 408 U.S. at 577.

See also *Arnett* v. *Kennedy*, 42 U.S.L.W. 4513, 4530 (decided April 16, 1974) (Powell, J. concurring).

Similarly, in *Perry* v. *Sindermann*, 408 U.S. 593 (1972), the Court held that property rights

> "are not limited by a few rigid, technical forms. Rather, 'property' denotes a broad range of interests that are secured by existing 'rules or understandings.' . . . A person's interest in a benefit . . . is a 'property' interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit. . . ." 408 U.S. at 601.

We think it clear that plaintiffs' interest in attending school is "property" as defined in *Roth* and *Sindermann*. The Ohio constitution since the Northwest Ordinance of 1787 has provided for a public school system, and present Ohio statutes not only establish such a system, but require that all children between the ages of 6 and 18 attend school. Ohio Revised Statutes §§ 3313.48, 3313.64, and 3321.01 *et seq*. Furthermore, the Ohio courts have held that a child has the right to attend public school. *Dornette* v. *Allais*, 76 Ohio App. 345, 63 N.E.2d 805 (1945). The property right of plaintiffs here is at least as strong as that of the welfare recipients in *Goldberg* v. *Kelly*, 397 U.S. 254 (1969); of the uninsured driver in *Bell* v. *Burson*, 402 U.S. 535 (1971); and of the untenured instructor in *Perry* v. *Sindermann*, *supra*.

C. *The Interest Invaded Is Substantial*

This Court has made it clear that due process applies wherever the protected interest invaded "cannot be characterized as *de minimis*." *Fuentes* v. *Shevin*, 407 U.S. 67, 90 n. 21 (1972); *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 342 (1969) (Harlan, J. concurring). The interests of the students involved here are plainly substantial.

1. *Interference with Education.* This court has correctly noted that "continuity of instruction [in public schools] is a significant and legitimate educational goal." *Cleveland Board of Education* v. *LaFleur*, —— U.S. ——, 94 S. Ct. 791, 797 (1974). Indeed, Appellants and their supporters make this point themselves with respect to the necessity of avoiding disruptions of school activities. (Ohio Amicus Br.[1] 13-14). But they fail to recognize that disruption of scholastic continuity is harmful not merely because it interferes with the school administrator's ease, but because it interferes with the student's opportunity to learn. In the present case, the facts are clear that the suspended students receive zeros for all work missed and have no opportunity to make up such work. (A. 164-65). And ten days is more than 10% of an entire school semester.

Appellants and their supporters claim that the effect of the suspensions on the plaintiffs' grades and education was minimal because, as a group, plaintiffs successfully completed their work during the semesters in which they were suspended. (Ohio Amicus Br. 11). This argument simply misses the point. First, a number of plaintiffs were not successful during the semesters involved. Plaintiff

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[1] We thus refer to the Amicus brief filed in support of Appellants by the Buckeye Association of School Administrators, *et al*.

Dwight Lopez, for example, lost credits since he was "suspended" in March, 1971, and was not allowed to return until the next semester. More important, even those plaintiffs who did maintain reasonable grades despite their suspensions were forced to do so under a handicap. But for their suspensions, they might well have done better. Compare *Burke* v. *Ford*, 389 U.S. 320 (1967). In fact, Appellant Norval Goss himself admitted that a suspension could well have an adverse academic effect. (A. 166).

Moreover, it is the qualitative nature of the deprivation which is important, not merely the length of time involved:

> "The Fourteenth Amendment draws no bright lines around 3-day, 10-day or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause. While the length and consequent severity of the deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right . . . ." *Fuentes* v. *Shevin, supra*, 407 U.S. at 86.

See also *Sniadach* v. *Family Finance Corp., supra; Bell* v. *Burson, supra.*

2. *Maintenance of Permanent Records.* Even a short suspension has a permanent effect on the student because of the elaborate record keeping by the school system and the utilization of such records in future evaluation of the student. Thus, for example, Plaintiff Deborah Fox had entered in her records the notation "3/15/71 suspended for student disruption." (A. 219). Colleges rely on such information in determining whom to admit; teachers and school administrators rely on such information for recommendations, and in consideration of placement of students; and courts may even rely on such records for passing judgment on children appearing in family court and in other juvenile proceedings. See *Hatter* v. *Los Angeles City High School District*, 452 F.2d 673 (9th Cir. 1971); *Vail* v. *Board of Education*, 354 F. Supp. 592 (D.N.H. 1973); W. Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline*, 119 U. Pa. L. Rev. 545, 579 n. 161 (1971). Furthermore, insofar as grades are affected by a suspension, that effect is also permanently bound into the student's records. *Shanley* v. *Northeast Independent School District*, 462 F.2d 960, 967 n. 4 (5th Cir. 1972) (noting that a one hour suspension as a result of which a student missed a final examination and flunked a course would be "quite critical"). Thus, the suspension may be relatively short-term, but its effects are not. The court below properly recognized this factor when it ordered the defendants to expunge from their records information about Plaintiffs' suspension.

3. *Stigma.* The stigma attaching from a suspension was the subject of uncontroverted testimony in the court below. Teachers and school administrators believe that the suspended student is a social deviant, expect the student to be a troublemaker in the future, and react to him or her accordingly. (A. 157, 173). Often, his or her family and friends are of the same view. (A. 158, 174). The psychologists who testified below, both experts in the field, concluded that every suspension stigmatizes a child. (A. 158-59, 173). And they both agreed that the effect was all the worse where the student had little perception of the reasons for the suspension, as was the case here. (A. 160, 176).

The lower courts have reached the same conclusion as to stigma. See, *e.g., Dixon* v. *Alabama State Board of Education*, 294 F.2d 150, 157 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961). Thus, as one lower court put it:

> "[S]uspension is a particularly humiliating punishment, evoking images of the public penitant of medieval Christendom and colonial Massachusetts, the outlaw of the American West, and the ostracized citizen of classical Athens. Suspension is an officially-sanctioned judgment that a student be for some period removed beyond the pale." *Sullivan* v. *Houston Independent School District*, 333 F. Supp. 1149, 1172 (S.D. Tex. 1971).

For this reason, too, the Plaintiffs' interest is substantial.

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Appellants and the Amici who support them contend that education is entirely beyond the scope of the due process clause and no deprivation of education need be accompanied by any procedural safeguards. Every court to consider that proposition has flatly rejected it. See, *e.g.*, *Papish* v. *Board of Curators of the University of Missouri*, 410 U.S. 667 (1973); *Hatter* v. *Los Angeles City High School District, supra; Dixon* v. *Alabama State Board of Education, supra.*

The Appellants seek to avoid this overwhelming weight of authority by arguing that because this Court held in *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1 (1973), that education is not a "fundamental interest" for purposes of the equal protection clause, deprivation of education is entitled to no due process protection at all. That argument is not merely incorrect, it is downright bizarre. A determination of fundamentality for equal protection purposes depends upon whether the interest is "explicitly or implicitly guaranteed by the Constitution" and is relevant only to whether a classification involving that interest must survive a compelling state interest or merely a rational basis test. *Rodriguez, supra,*

411 U.S. at 33-34.[2] Whether an interest is fundamental or not is plainly irrelevant to due process considerations, for, as noted above, the Due Process Clause applies to statutorily created, as well as constitutionally created, rights. *Board of Regents* v. *Roth, supra,* 408 U.S. at 577. In fact, this Court so indicated in *Rodriguez* itself. See 411 U.S. at 33 n. 72. For as the Court there pointed out, in *Dandridge* v. *Williams*, 397 U.S. 471 (1970), and *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), the Court held that welfare is not a fundamental right for equal protection purposes, but that it is a protected property interest for due process purposes. See also *Bell* v. *Burson, supra,* requiring due process hearings for the deprivation of a drivers license, hardly a "fundamental interest"; and *Kister* v. *Ohio Board of Regents*, 365 F. Supp. 27, 39 (S.D. Ohio 1973), *aff'd mem.*, —— U.S. ——, 94 S. Ct. 855 (1974), where the court held that "while education is not a fundamental right, that does not mean the university may arbitrarily dismiss a student without due process of law."

We think it clear that due process protections attach to educational deprivations of the sort involved here.

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[2] In *Rodriguez*, this Court seriously considered the constitutionality of the Texas statute under the rational basis test. The Court ultimately determined that the Texas scheme "was not so irrational as to be invidiously discriminatory." Nevertheless, its approach to the challenge clearly demonstrates that the absence of a fundamental interest, even in an equal protection case, is hardly tantamount to an absence of constitutional protection.

II.

The Procedures Ordered by the Lower Court Are Required to Meet Minimum Due Process Standards

Once it is determined that a non *de minimis* protected interest is involved, it is evident that the Ohio statute here in question and the Appellants' *modus operandi*, which provide no process at all, are unconstitutional. It remains to be considered only what process is due. *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972); *Arnett* v. *Kennedy*, *supra*, 42 U.S.L.W. at 4531 (Powell, J., concurring), 4524 (Marshall, J., dissenting).

We start, as did the court below, with this Court's opinion, in *Board of Regents* v. *Roth*, *supra*:

> "Before a person is deprived of a protected interest, he must be afforded opportunity for some kind of a hearing, 'except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event.' *Boddie* v. *Connecticut*, 401 U.S. 371, 379. 'While [m]any controversies have raged about . . . the Due Process Clause, . . . it is fundamental that except in emergency situations . . . due process requires that when a State seeks . . . [to deprive a person of a protected interest] . . . it must afford 'notice and opportunity for hearing appropriate to the nature of the case' *before* the . . . [deprivation] becomes effective.' *Bell* v. *Burson*, 402 U.S. 535, 542." 408 U.S. at 570 n. 7.

See also *Arnett* v. *Kennedy*, *supra*, at 4531 (Powell, J., concurring), 4524 (Marshall, J., dissenting); *Fuentes* v. *Shevin*, 407 U.S. 67 (1972); *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969); *Armstrong* v. *Manzo*, 380 U.S. 545 (1965).

The students' interests have been set out in some detail above. They are, in brief, to continue their educations uninterrupted, without unnecessarily and unfairly missing school work, with the consequent adverse educational effects in grades and credits; to avoid being stigmatized unfairly and incorrectly as troublemakers, with the resulting psychological and educational damage; and to maintain their permanent educational files and records free of entries which improperly indicate for future reference that the student engaged in misconduct and was suspended, with possibly permanent damage to the student's ability to obtain admission to college, a good job, and the like.

The interest of the City of Columbus in suspending students from school without procedural protections is, quite frankly, unclear to us. We would have thought, for the reasons set forth in the Summary of Argument, *supra*, that in our society school administrators have every interest in demonstrating to their students that democratic procedures work, and work well in protecting the rights of citizens.[3] The present Amici, who themselves are intimately involved in school matters, are certainly of that view. See,

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[3] See W. Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline*, 119 U. Pa. L. Rev. 545, 574-75 (1971):

> "[T]he school has an interest in providing fair procedures. Although procedural due process is only one educational value of many, its importance is especially great at a time when serious questions are being raised about the validity of what the school offers. From a more pragmatic point of view, providing fair procedures for school discipline may actually eliminate the distracting effect of disciplinary proceedings that do not give the student a fair opportunity to defend himself against the authorities or that leave students with a feeling that they have been dealt with unfairly. . . . The school has no legitimate interest in disciplining a student who has not been given a minimal opportunity to establish his innocence or the inappropriateness of a particular sanction."

e.g., National Education Association, Code of Student Rights and Responsibilities (1971).

That does not mean that Appellants have no interest in avoiding unnecessarily formal procedures. The court below held, and Amici agree, that school officials have an interest in controlling discipline and in avoiding disruption by both unruly students and procedures which require too much formality. The lower court's decision fully accommodated the Appellants' interests in its holding that (a) a hearing must normally be provided before suspension, but where the student involved is threatening to disrupt the academic atmosphere of the school, or endangering property or personnel, the hearing might be held anytime within three days of the suspension; (b) the hearing need not allow counsel or follow formal rules, but need merely provide the student with statement(s) of what he or she has allegedly done and give the student an opportunity to submit his or her own statement and statements of others in his or her defense; and (c) the administrator making the suspension decision tell the student reasonably promptly what decision has been made and why.

These requirements are truly minimal. Prior decisions of this court have uniformly held that where factual issues must be resolved, due process requires an evidentiary hearing with and unbiased trier of fact and the right to present evidence and confront and cross-examine accusers. Such protections can be provided in even the most informal proceedings. *Morrissey* v. *Brewer, supra; Goldberg* v. *Kelly, supra.* The opinion of the court below, of course, does not go even this far.[4]

Yet the Appellants and the Amici who support them would reject even the minimal protections ordered by the

[4] Since Appellees herein have not cross-appealed, there is no need for this Court to consider the adequacy of the remedy provided by the lower court.

court below. In support of this result, they advance a number of wholly unpersuasive arguments:

1. First they maintain that they "are committed to the improvement of education in the public schools," and that such improvement can result only from "a process of experimentation and innovation involving the utilization" of suspensions as "educational tools." (Ohio Amicus Br. 1). Suspension as an "educational tool" hardly seems a good faith "improvement in the educational process," but in any case, what is involved here is not a school administration's right to suspend students in appropriate cases, but only its right to do so without a hearing.

2. Next they claim that "flexibility" and "efficiency" require that schools must use summary procedures in all cases. They claim that any type of a hearing will always have disruptive effects on the conduct of school programs and submit copious statistics as to the large number of suspensions yearly in Ohio schools. (Ohio Amicus Br. 12-13, 23-24). This argument simply misstates the case. Many, if not a majority, of large and small school districts around the country have been operating for years on a prior hearing basis without significant problems. Such districts include Houston, Texas, Pittsburgh, Pennsylvania, and Seattle, Washington. *Sullivan* v. *Houston Independent School District,* 333 F. Supp. 1149 (S.D. Tex. 1971); Pittsburgh Board of Public Education, Procedures for Dealing with Student Misconduct (1971); Seattle School Board, Statement of Rights and Responsibilities (1970).[5] See gen-

[5] The Seattle regulations guarantee a full due process hearing and go much further than the minimum requirements ordered by the court below:

"Procedural Rules and Regulations for the School Community.

The constitutional rights of individuals assure the protection of due process in law; therefore, this system of constitutionally

erally P. Lines, *The Case Against Short Suspensions,* Inequality in Education, No. 12, p. 39 (July, 1972). Furthermore, the procedures required by the Court below were

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and legally sound procedures is developed with regard to the administration of discipline in the Seattle Public Schools:

(1) The hallmark of the exercise of disciplinary authority shall be fairness.

(2) Every effort shall be made by administrators and faculty members to resolve problems through effective utilization of school district resources in cooperation with the student and his parent or guardian.

(3) A student must be given an opportunity for a hearing if he or his parent or guardian indicate the desire for one. A hearing shall be held to allow the student and his parent or guardian to contest the facts which may lead to disciplinary action, or to contest the appropriateness of the sanction imposed by a disciplinary authority, or if the student and his parent or guardian allege prejudice or unfairness on the part of the school district official responsible for the discipline.

(4) The hearing authority may request the student and parent or guardian to attempt conciliation first, but if the student and parent or guardian decline this request, the hearing authority shall schedule the hearing as soon as possible.

(5) The following procedural guidelines will govern the hearing:

a. Written notice of charges against a student shall be supplied to the student and his parent or guardian.

b. Parent or guardian shall be present at the hearing.

c. The student, parent or guardian may be represented by legal counsel.

d. The student shall be given an opportunity to give his version of the facts and their implications. He should be allowed to offer the testimony of other witnesses and other evidence.

e. The student shall be allowed to observe all evidence offered against him. In addition he shall be allowed to question any witness.

f. The hearing shall be conducted by an impartial hearing authority who shall make his determination solely upon the evidence presented at the hearing.

g. A record shall be kept of the hearing.

designed to minimize disruption by allowing statements in written form and by limiting the formality required.

That school systems in Houston and Seattle, for example, which are much larger than that of Columbus, can successfully operate under a prior hearing system clearly demonstrates the irrelevance of the statistics submitted by Appellants' supporters. Indeed, the large numbers submitted may well demonstrate nothing more than that under the Ohio statute here at issue school administrators use the "educational tool" of suspension much too freely.[6] Indeed, numerous studies have shown that, where adequate procedures are not followed, suspensions are too often abusively used.[7] C. Wright, *The Constitution on Campus,* 22 VAND. L. REV. 1027, 1059-60 (1969).

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h. The hearing authority shall state within a reasonable time after the hearing his findings as to whether or not the student charged is guilty of the conduct charged and his decision, if any, as to disciplinary action.

i. The findings of the hearing authority shall be reduced to writing and sent to the student and his parent or guardian.

j. The student and his parent or guardian shall be made aware of their right to appeal the decision of the hearing authority to the appropriate appellate authority."

Seattle School Board, Statement of Rights and Responsibilities (1970), reprinted in Administrator's Notebook, Vol. XX, No. 6, pp. 3-4 (February, 1972).

[6] Dayton, Ohio, for example, nearly halved the number of suspensions (and, incidentally, reduced the number of expulsions sixfold) by revising its procedures under a federal program. Education USA, Vol. 16, No. 25, p. 134 (February 18, 1974).

[7] For example, about twice as many black students seem to be summarily suspended from school as whites. Southern Regional Council, The Student Pushout: Victims of Continued Resistance to Desegregation 4-6 (1973); Report of the Senate Select Comm. on Equal Educational Opportunity, "Toward Equal Educational Opportunity," 92d Cong., 2d Sess. 140 (1972). Similarly, suspen-

Moreover, "flexibility" and "efficiency," while not irrelevant, are not the end point of any constitutional analysis. As this Court held in *Stanley* v. *Illinois*, 405 U.S. 645 (1972):

> "The establishment of prompt and efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from . . . overbearing concern for efficacy . . . ." 405 U.S. at 656.

3. Finally, and at greatest length, Appellants, *et al.*, argue that student disruptions always create an emergency so that a prior hearing is not required. (Ohio Amicus Br. 14-15). Initially, it should be noted that where there is a disruption or threat to order, the lower court decision allows the hearing to be held after the suspension takes effect. But it is just not true that students are only suspended in emergency situations. The facts in this case plainly demonstrate otherwise. For instance, Plaintiff Dwight Lopez was suspended when he was at home after school had been let out for the weekend. Plaintiff Betty Crome was also

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sions of students for exercise of their First Amendment rights have been a continuing problem. The facts in this case show that one of the plaintiffs, Susan Cooper, was suspended for making "negative comments," a right one might have thought enjoyed First Amendment protection and which might not so easily have been ignored with proper procedural protections. See *Tinker* v. *Des Moines Independent School District*, 393 U.S. 503 (1969); *Papish* v. *Board of Curators of the University of Missouri*, *supra*; *Shanley* v. *Northeast Independent School District*, *supra*.

suspended while at home. Plaintiff Susan Cooper was suspended because she wanted to leave the school grounds. It is hard to see what "emergency" necessitated immediate action in these cases. There are, no doubt, many other similar non-emergency cases among the suspensions which have taken place under the Ohio statute here in question.

In our view, the procedures ordered by the lower court are the very minimum consistent with the requirements of due process.

CONCLUSION

Appellants and their supporters strenuously maintain that the Ohio statute should be held to be constitutional because due process does not require a prior hearing. That contention is simply not consistent with this Court's rulings on due process. Moreover, the Appellants conveniently ignore the fact that the statute and their own standard operating procedure involved here does not provide for any form of hearing *ever—neither before nor after* the suspension. No case has ever upheld the deprivation of a pro-

tected right without some form of hearing at some time. Yet that is precisely what Appellants would have this Court do. The lower court properly rejected Appellants' contentions, and its decision should be affirmed.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-898

NORVAL GOSS, et al.,

Appellants,

v.

EILEEN LOPEZ, et al.,

Appellees.

ON APPEAL FROM A THREE JUDGE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

BRIEF OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AMICI CURIAE IN SUPPORT OF THE DECISION BELOW

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Arnett v. Kennedy, 42 U.S.L.W. 4513 (U.S., 1974). 21

Bell v. Burson, 402 U.S. 535 (1971) 17, 19

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Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961) 20

Cooper v. Aaron, 358 U.S. 1 (1958) 24

Crews v. Cloncs, 432 F.2d 1259 (7th Cir. 1970) 24

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Fuentes v. Shevin, 407 U.S. 67 (1972) 21, 22

Givens v. Poe, Civil No. 2615 (W.D.N.C., Nov. 1, 1972), *implementing* 346 F. Supp. 202 (W.D.N.C. 1972) 22

Goldberg v. Kelly, 397 U.S. 254 (1970) 17, 19, 21, 23

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Jones v. Lee Way Motor Freight, Inc., 431 F.2d 245 (10th Cir. 1970), *cert. denied*, 401 U.S. 954 (1971) 7

Keyes v. School District No. 1, 413 U.S. 189 (1973) 11

Madera v. Board of Education, 267 F. Supp. 356 (S.D.-N.Y.), *rev'd*, 386 F.2d 778 (2d Cir. 1967), *cert. denied*, 390 U.S. 1028 (1968) 13

Cases, continued: Page

Mello v. School Committee, Civil No. 72-114 (D. Mass., Apr. 6, 1972) 23

Meyer v. Nebraska, 262 U.S. 390 (1923). 18, 19

Mills v. Board of Education, 348 F. Supp. 866 (D.D.C. 1972) 22

Morrissey v. Brewer, 408 U.S. 471 (1972). 21

Perry v. Sindermann, 408 U.S. 593 (1972) 17,19

Pervis v. LaMarque Independent School District, 466 F.2d 1054 (5th Cir. 1972) 24

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Stricklin v. Regents of University of Wisconsin, 297 F. Supp. 416 (W.D. Wis. 1969), *appeal dismissed*, 420 F.2d 1257 (7th Cir. 1970) 23, 24

Sullivan v. Houston Independent School District, 475 F.2d 1071 (5th Cir.), *cert. denied*, 94 S. Ct. 461 (1973) 22

Swann v. Charlotte-Mecklenburg Board of Education, 311 F. Supp. 265 (W.D.N.C.), *modified*, 431 F.2d 138 (4th Cir. 1970), *aff'd*, 402 U.S. 1 (1971) 7, 11

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Tinker v. Des Moines School District, 393 U.S. 503 (1969) 24

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United States v. Wilcox County Board of Education, Civil No. 3934-65-H (S.D. Ala., May 15, 1973), *aff'd*, Civil No. 73-3543 (5th Cir., May 2, 1974) 8

Vail v. Board of Education, 354 F. Supp. 592 (D.N.H. 1973) 22

Cases, continued: Page

Wieman v. Updegraff, 344 U.S. 183 (1952) 20
Wisconsin v. Constantineau, 400 U.S. 433 (1971) 16
Wisconsin v. Yoder, 406 U.S. 205 (1972) 18

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AMERICAN FRIENDS SERVICE, YOUR SCHOOLS: SPECIAL REPORT (April 1974) 7

Bell, *Race and School Suspensions in Dallas*, 62 INTEGRATED EDUCATION 66 (March-April 1973) 6, 8

BUREAU OF LABOR STATISTICS, U. S. DEPARTMENT OF LABOR, BULL. NO. 1699, BLACK AMERICANS: A CHARTBOOK (1971). 13

A. CAMPBELL & H. SCHUMAN, SUPPLEMENTAL STUDIES FOR THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS: RACIAL ATTITUDES IN FIFTEEN AMERICAN CITIES (1968). 10

K. CLARK, DARK GHETTO (1965) 9

Clarke, *Race and Suspensions in New Orleans*, 63 INTEGRATED EDUCATION 30 (May-June 1973). 6

Gottlieb, *Teaching and Students: The Views of Negro and White Teachers*, THE DISADVANTAGED LEARNER 437 (1966) 9

Havighurst, Smith & Wilder, *A Profile of the Large-City High School*, NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS BULLETIN 76 (January 1971) 6

C. JENCKS, et al., INEQUALITY: A REASSESSMENT OF THE EFFECT OF FAMILY AND SCHOOLING IN AMERICA (1972) 12, 13

Other Authorities, continued: Page

Katz, *The Socialization of Academic Motivation in Minority Group Children*, NEBRASKA SYMPOSIUM ON MOTIVATION 133 (1967) 14

D. KIRP & M. YUDOF, EDUCATIONAL POLICY AND THE LAW (1974) 9

J. MERCER, EVALUATING INTEGRATED ELEMENTARY EDUCATION: TECHNICAL MANUAL (Prime ed. 1974) 9

Office for Civil Rights, U.S. Department of Health, Education and Welfare, Elementary and Secondary School Civil Rights Survey (1970-71) 7

Office for Civil Rights, U.S. Department of Health, Education and Welfare, Elementary and Secondary School Civil Rights Survey (Form OS CR 102, 1972-73) 5

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Wells, *The Effects of Discrimination Upon Motivation and Achievement of Black Children in Urban Ghetto Schools*, 12 AMERICAN BEHAVIORAL SCIENTIST 26 (1968-69) 14

Wilkerson, *Understanding the Black Child*, 46 CHILDHOOD EDUCATION 351 (April 1970) 9

Wright, *The Constitution on Campus*, 22 VAND. L. REV. 1027 (1969) 21

Wright, *The New Word is Pushout*, 4 RACE RELATIONS REPORTER 8 (May 1973). 7

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OPINION BELOW

The opinion below is contained in Appellants' Jurisdictional Statement at 20 (Appendix B).

JURISDICTION

The jurisdiction of this Court to review the judgment below is invoked pursuant to 28 U.S.C. § 1253. The Court noted probable jurisdiction on February 19, 1974. 42 U.S.L.W. 3468.

CONSENT OF THE PARTIES

The National Association for the Advancement of Colored People and the Southern Christian Leadership Conference file this Brief with the consent of both parties, whose letters of consent have been filed with the Clerk.

QUESTION PRESENTED

Whether the court below was correct in holding that the exclusion of Ohio students from public school for up to ten days without *any* form of fact-finding hearing or conference was a violation of the Due Process guarantees of the Fourteenth Amendment to the United States Constitution?

INTEREST OF *AMICI CURIAE*

The National Association for the Advancement of Colored People (NAACP) and the Southern Christian Leadership Conference (SCLC) are nonprofit membership associations representing the interests of more than 500,000 members throughout the United States. For many years both amici have sought through the courts to establish and protect the civil rights of minority citizens. In this respect, NAACP and SCLC have appeared often before this Court as amici in cases involving school desegregation, employment, voting rights, jury selection, capital punishment, and other cases involving fundamental human rights.

The present case is of particular importance to amici because it centers around the role and responsibility of a state to assure that the rights of minority children, as enunciated by this Court twenty years ago in *Brown v. Board of Education*, 347 U.S. 483 (1954), are in fact given the paramount attention that they were accorded at that time.

Amici believe that the duty of school officials to provide school disciplinary procedures which comply with the Fourteenth Amendment is no less important than the duty of school officials to assure meaningful desegregation, because discriminatory application of school discipline can seriously undermine the commitment to desegregation and equal educational opportunities for minority students.

STATEMENT OF THE CASE

Amici adopt the statement of the case set forth in Appellees' Brief on the Merits.

ARGUMENT

This case involves the sweeping and indiscriminate suspension of Black students[1] from Columbus, Ohio public schools for allegedly taking part in demonstrations which occurred following the observance of "Black History Week." Although the facts relating to the schools' charges of misconduct were *very* much in dispute, the principals suspended these students without affording them a hearing or any opportunity to present their account of the events.

Amici are filing this Brief because the legal issues presented here are of extreme importance to minority students throughout this country. As we will show in Part I of this Brief, there is a high, and dramatically disproportionate, incidence nationwide of school suspensions and other forms of disciplinary action against Black students. In most localities a Black is at least two or three times

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[1] While the record does not reveal the race of every student suspended, attorneys for appellees have informed amici that all nine named plaintiffs are Black.

more likely than a White to be suspended from public school.

Amici will demonstrate in Part II of their Brief that these disciplinary actions not only hit minority students more frequently than others, but also that they affect minority students more severely. This Court often has stressed the importance of education in helping to break the cycle of discrimination and deprivation that may freeze minority citizens out of their full share of rights and opportunities in our society. Disadvantaged Black children, who are uniquely dependent upon public education to achieve full equality, frequently enter school already at an academic disadvantage relative to their White classmates, and can be expected to fall further and further behind if their schooling is interrupted by unjustified suspensions. Numerous studies and data confirm that racial discrimination in the application of school discipline – especially in the context of schools encountering the stresses of the desegregation process – tends to negate that valuable effect of our educational system.

Finally, in Part III, we review the factors that this Court has held to be essential in determining the constitutional requirements of procedural due process. Weighing those factors in this case, especially considering the significant possibility of racial discrimination implicit in off-the-record, unreviewable disciplinary actions, amici respectfully urge the Court to conclude that Fourteenth Amendment principles of due process of law require state officials to hold hearings before suspending students from public schools.

I.

MINORITY STUDENTS ARE THE PRINCIPAL VICTIMS OF STANDARDLESS, UNREVIEWABLE SUSPENSIONS AND EXPULSIONS FROM PUBLIC SCHOOLS.

Countless studies and statistical reports have documented that minority students are far more likely than others to suffer the drastic punishment of suspension or expulsion from public school. Whether or not there has been conscious racial discrimination in this or any other individual case, it is clear that the vague standards and lack of due process implicit in Columbus, Ohio school disciplinary rules and procedures result in a body of essentially unreviewable decisions that strike most harshly at minority children.

In Ohio public schools a Black student is more than twice as likely as a White student to be suspended from school. Statistics available from the United States Department of Health, Education and Welfare indicate that in the 1972-73 school year 8 percent of the Black students enrolled in reporting Ohio public school districts were suspended, compared to only 3.7 percent of the White students enrolled in the same school districts.[2]

These statistics are consistent with data showing a similar disproportionate incidence of suspensions among Black students in other states. For example, during a

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[2]Form OS CR 102, 1972-73 Annual Elementary and Secondary School Civil Rights Survey (available at Office for Civil Rights, U.S. Department of Health, Education and Welfare, 330 Independence Ave., S.W., Washington, D.C. 20201).

Interestingly, 46 of the 47 school districts included in this 1973 survey provided HEW with the information requested. The *one* Ohio school district that failed to comply, claiming that the information was unavailable, was the Columbus, Ohio district!

recent period in St. Petersburg, Florida, approximately 50 percent of student suspensions were directed against Black students, although they constituted only 16 percent of the total enrollment.[3] Similarly, in Prince George's County, Maryland, a Black student is more than twice as likely as a White student to be suspended.[4] A survey by the United States Commission on Civil Rights indicates that in some school districts the disproportionate impact of suspensions on minority students may be far higher.[5]

Available statistics on expulsions show the same consistent pattern of Blacks being expelled in far higher percentages than their percentages of enrollment. In 1970-71

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[3] SOUTHERN REGIONAL COUNCIL & ROBERT F. KENNEDY MEMORIAL, THE STUDENT PUSHOUT: VICTIM OF CONTINUED RESISTANCE TO DESEGREGATION 5 (1973) [hereinafter cited as "THE STUDENT PUSHOUT"].

[4] Between September, 1973, and January, 1974, 7 percent of the Black enrollment was suspended, compared to 3 percent of the White enrollment. These figures are available from the Maryland State Board of Education, P.O. Box 8717, Baltimore, Maryland 21240.

[5] The Commission found in a survey of Southwest schools that the ratio of eighth-grade Black students who were suspended twice or more during the 1968-69 school year, compared to Whites in the same category, was four-to-one. School Principal Information Form, Question 46M, Mexican American Education Study, United States Commission on Civil Rights.

Amici have been advised that the Brief to be filed in the instant case by the Children's Defense Fund will contain a more detailed presentation and analysis of recent suspension data. *See generally Sweet v. Childs*, No. 73-3842, 5th Cir., Appellants' Brief at 42 (Jackson County, Fla.: 4-1 ratio); THE STUDENT PUSHOUT 5 (Tampa, Fla.: 2.5-1 ratio); *id.* at 2 (Little Rock, Ark.: 2-1 ratio); Bell, *Race and School Suspensions in Dallas*, 62 INTEGRATED EDUCATION 66 (March-April 1973) (approximately 2-1 ratio); Clarke, *Race and Suspensions in New Orleans*, 63 INTEGRATED EDUCATION 30 (May-June 1973) (same).

the expulsion rate for Black students was *three times* the rate for non-minority students in the 1,226 reporting school districts across the country. Office for Civil Rights, U.S. Department of Health, Education and Welfare, Elementary and Secondary School Civil Rights Survey (1970-71).[6]

The likely explanation of the foregoing statistical disparities is that disproportionate Black suspensions are a consequence of racial discrimination and the tensions attendant to massive desegregation.[7] Suspensions have risen dramatically immediately following integration in school districts throughout the country.[8] Moreover, in

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[6] *See also* THE STUDENT PUSHOUT 4, 7; AMERICAN FRIENDS SERVICE, YOUR SCHOOLS: SPECIAL REPORT 14-15 (April 1974).

[7] Numerous cases have held that statistical disparities such as these can constitute prima facie evidence of racial discrimination. For example, in *Turner v. Fouche*, 396 U.S. 346 (1970), this Court held that the "substantial disparity between the percentages of Negro residents in the county as a whole [60%] and of Negroes on the newly constituted jury list [37%] . . ." was prima facie evidence of racial discrimination. *See also Jones v. Lee Way Motor Freight, Inc.*, 431 F.2d 245 (10th Cir. 1970), *cert. denied*, 401 U.S. 954 (1971); *Alabama v. United States*, 304 F.2d 583 (5th Cir.), *aff'd*, 371 U.S. 37 (1962). In the instant case, it is not necessary to conclude that there is statistical evidence sufficient to prove racial discrimination. However, the statistical disparities do suggest the possibility, if not the likelihood, that suspensions are applied in a racially discriminatory manner.

[8] For example, during the first year of integration in San Francisco, California, suspensions in the sixth grade rose to 795, compared to 491 the year prior to integration. Wright, *The New Word is Pushout*, 4 RACE RELATIONS REPORTER 8, 9 (May 1973). In the Charlotte-Mecklenburg County, North Carolina school district suspensions rose from 1,544 in 1968-69 (prior to the decision in *Swann v. Charlotte-Mecklenburg Board of Education*, 311 F. Supp. 265 (W.D.N.C.), *modified*, 431 F.2d 138 (4th Cir. 1970), *aff'd*, 402 U.S. 1 (1971), that ruled busing was a valid means of achieving desegregation) to 6,652 in 1970-71. THE STUDENT PUSHOUT 4.

prosecuting desegregation cases the Justice Department has recognized that resistance to desegregation may take the form of suspension of Blacks. The Department therefore has sought and obtained court orders expunging students' suspension and expulsion records and establishing requirements for a hearing prior to any suspension.[9] *See, e.g., United States v. Wilcox County Board of Education*, Civil No. 3934-65-H (S.D. Ala., May 15, 1973), *aff'd*, Civil No. 73-3543 (5th Cir., May 2, 1974). It has been documented that disciplinary problems are more common in integrated schools than in either all-Black or all-White schools. Havighurst, Smith & Wilder, *A Profile of the Large-City High School*, NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS BULLETIN 76 (January 1971).

> According to one analysis,
> conflict has provoked harsher disciplinary policies, and blacks allege that the policies are applied more rigidly and harshly to them than to white students. School administrators respond that blacks are more inclined to physical aggression, particularly as they are removed from their neighborhoods and placed in an unfamiliar, if not hostile, school environment. *See, e.g., Tillman v. Dade County School Board*, 327 F. Supp. 930 (S.D. Fla. 1971); *Blount v. Ladue School Dist.*, 321 F. Supp. 1245 (E.D. Mo. 1970).
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> . . . The frequency of disputes (including many that never reach the courts) suggests that in at least some districts educators have not sought diligently

[9]The Office for Civil Rights of the U.S. Department of Health, Education and Welfare, in its evaluation of the desegregation process in the Dallas Independent School District during the 1971-72 school year, noted the aggregate number of suspensions (17,917) as an indication that the desegregation plan was not producing the desired results. Bell, *Race and School Suspensions in Dallas*, 62 INTEGRATED EDUCATION 66, 67 (March-April 1973).

> to make integration work; it also serves as a reminder that in many parts of the country integration signals a social revolution that inevitably causes considerable dislocation and strife. [D. KIRP & M. YUDOF, EDUCATIONAL POLICY AND THE LAW 431 (1974).]

The statistical inference that suspensions are being discriminatorily applied is reinforced by findings that teachers, particularly White teachers, perceive Black children differently from White children. A recent study of more than 50 California elementary schools, conducted by Dr. Jane Mercer, University of California at Riverside, concluded that teachers perceive Black children as being more disobedient than Whites.[10] This finding comports with earlier studies which have concluded that teachers perceive Black children more negatively than White children.[11]

The evidence that disproportionate suspensions may result from racial discrimination highlights the necessity of adequate procedural safeguards to protect minority

[10]J. MERCER, EVALUATING INTEGRATED ELEMENTARY EDUCATION: TECHNICAL MANUAL, at Table 25 (PRIME ed.1974), available from Program Research in Integrated Multiethnic Education, a General Assistance Center, University of California, Riverside, Calif., 92502.

[11] In a survey of elementary school teachers in a medium-sized industrial town in the Midwest, the Black teachers perceived their students, who were primarily low-income Black students, differently than did the White teachers. The Black teachers perceived the students as fun loving, happy, cooperative, energetic and ambitious; whereas, the White teachers perceived the students as talkative, lazy, fun loving, high strung and rebellious. Gottlieb, *Teachers and Students: The Views of Negro and White Teachers*, THE DISADVANTAGED LEARNER 437, 444 (1966). Teachers' negative perceptions of the achievement levels of Black pupils have been widely noted. Wilkerson, *Understanding the Black Child*, 46 CHILDHOOD EDUCATION 351 (April 1970); K. CLARK, DARK GHETTO 132 (1965).

students from actual discrimination and from the appearance of discrimination.[12] It is important not only that the system act fairly, but also that it be perceived as acting fairly. If the school denies them procedural safeguards, Black students may perceive that they are being discriminatorily disciplined, whether they are or not. *See, e.g.*, A. CAMPBELL & H. SCHUMAN, SUPPLEMENTAL STUDIES FOR THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS: RACIAL ATTITUDES IN FIFTEEN AMERICAN CITIES 22-26 (1968).

Since broadly worded school rules are especially susceptible of discriminatory application, a hearing is particularly important to provide protection against discriminatory application of facially neutral but vaguely worded school disciplinary policies and, just as importantly, to provide assurance to Black students that no discrimination exists.

II.

SUSPENSION FROM SCHOOL HAS A PARTICULARLY SEVERE IMPACT ON A MINORITY STUDENT.

Suspensions from public school not only affect minority students more frequently than others, but studies suggest that suspensions also result in greater educational detriment to the individual student if he or she is a member of a minority group.

Minority students, who are born economically and socially disadvantaged, are especially dependent on public education as the great equalizer by which they may aspire

[12] *See Greene v. McElroy*, 360 U.S. 474, 496-97 (1959) (emphasizing importance of procedural standards as protection against intolerance and prejudice).

to achieve greater advantages than their parents.[13] This Court has historically recognized the importance of education to racial minorities. In *Brown v. Board of Education*, 347 U.S. 483 (1954), this Court observed that

> [t]oday, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education. . . . [*Id* at 493.]

Underlying the entire line of public school equal protection cases is the Court's clear commitment to quality education for racial minorities. *See, e.g., Keyes v. School District No. 1*, 413 U.S. 189 (1973); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

Given the vital role of education in our society, and the dependence of racial minorities on education, an inter-

[13] It has been found that the achievement level of Black students is affected to a greater extent by the quality of public schooling they receive than is the achievement of Whites. OFFICE OF EDUCATION, U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, EQUALITY OF EDUCATIONAL OPPORTUNITY 22, 297 (1966) [hereinafter cited as "COLEMAN REPORT"]. The "indirect evidence suggests that it is those children who come least prepared to school, and whose achievement in school is generally low, for whom the characteristics of a school make the most difference." *Id.* at 297.

ruption of the educational process for even a few days may produce permanently harmful consequences. It has been widely documented that Black children generally are at an academic disadvantage when they enter the first grade. *See, e.g.*, COLEMAN REPORT 21, 275, 297; C. JENCKS, *et al.*, INEQUALITY: A REASSESSMENT OF THE EFFECT OF FAMILY AND SCHOOLING IN AMERICA (1972) [hereinafter cited as "JENCKS, INEQUALITY"]. They also fall further behind their White classmates in the critical skills of reading and verbal ability with each year of school.[14] COLEMAN REPORT 20-21. For the minority student, who is already at an academic disadvantage, an unjustified suspension may be the final, crippling blow. At the very least, the loss of school time resulting from a suspension, particularly when teachers may not have the time or inclination to assist in making up work, will place the suspended student at a

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[14] "The school appears unable to exert independent influences to make achievement levels less dependent on the child's background. . . ." COLEMAN REPORT 297. The Coleman Report concludes that

> [f]or most minority groups, then, and most particularly the Negro, schools provide little opportunity for them to overcome this initial deficiency; in fact, they fall farther behind the white majority in the development of several skills which are critical to making a living and participating fully in modern society. Whatever may be the combination of nonschool factors – poverty, community attitudes, low educational level of parents – which put minority children at a disadvantage in verbal and nonverbal skills when they enter the first grade, the fact is the schools have not overcome it. [COLEMAN REPORT 21.]

This finding is confirmed by a survey of Southwest public school districts which concluded that more than twice as many Blacks as Whites read below their grade level at 4th, 8th and 12th grades. UNITED STATES COMMISSION ON CIVIL RIGHTS, REPORT: THE UNFINISHED EDUCATION 24 (1971).

serious academic disadvantage. For the marginal student, the suspension may be the difference between passing grades and failing grades, between academic success and failure.

The possibility also exists that a temporary suspension may become permanent through the inertia of the student or for other reasons. *See* 22 RUTGERS L. REV. 342, 346 n.33 (1968). Even if the student returns to school on schedule, there is a tendency for suspensions to be repeated and an increased risk of eventual dropout.[15] This tendency aggravates an already serious dropout problem among Black students.[16]

When dropout occurs, the consequences for Blacks in the job market are particularly serious since Blacks are already disadvantaged by higher rates of unemployment, lower incomes, and a greater proportion of low-prestige or part-time jobs.[17] JENCKS, INEQUALITY 216 *et seq.* A

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[15] *Cf. Madera v. Board of Education*, 267 F. Supp. 356 (S.D. N.Y.), *rev'd*, 386 F.2d 778 (2d Cir. 1967), *cert. denied*, 390 U.S. 1028 (1968).

[16] The Coleman Report found that in 1965 17% of 16-17 year old Blacks were not in school compared to 9% of Whites. COLEMAN REPORT 28. This finding is corroborated by a survey of Southwest public school districts that found that of every 100 Black children entering first grade, 99 reach the eighth grade but only 67 graduate from high school; whereas, of every 100 Whites who enter first grade, 86 finish high school. UNITED STATES COMMISSION ON CIVIL RIGHTS, REPORT: THE UNFINISHED EDUCATION 10 (1971).

[17] In 1969, the median income of Black families as a percentage of White family incomes rose to the highest on record; even so, it was only 63% of median White family income, BUREAU OF LABOR STATISTICS, U. S. DEPARTMENT OF LABOR, BULL. NO. 1699, BLACK AMERICANS: A CHARTBOOK 38 (Table 16) (1971).

[footnote continued]

Black male high school graduate, from his 18th birthday through his 65th, will typically earn $76,000 more than a Black male who did not finish high school. The corresponding figure for a Black female is $73,000. THE STUDENT PUSHOUT 24.

A student suspended even temporarily, particularly one who feels that he has been suspended unfairly, is likely to become increasingly negative in his attitude toward school and toward his own educational achievement. For the Black child who enters school with a low opinion of himself and of his ability to do well, and without basic skills possessed by more advantaged children,[18] this effect on attitude is particularly severe.[19] Moreover, the suspen-

[footnote continued from preceding page]

Blacks tend to be employed in lower-status jobs than Whites. In 1970 40% of Blacks were employed as household workers, service workers, laborers, or farm workers, whereas, only 18% of Whites were so employed. *Id.* at 30 (Table 13). Moreover, in 1970 the unemployment rate among Blacks was 8.2% compared to the rate of 4.5% among Whites. *Id.* at 20 (Table 8). This difference is even greater among teenagers. Black teenagers in 1970 had an unemployment rate of 29.1%, 2.2 times that among White teenagers. *Id.* at 26 (Table 11).

[18] Wells, *The Effects of Discrimination Upon Motivation and Achievement of Black Children in Urban Ghetto Schools,* 12 AMERICAN BEHAVIORAL SCIENTIST 26 (1968-69). Educators have reported for some time that Black children in early years tend to exhibit cynicism, disinterest and hostility toward schooling. Katz, *The Socialization of Academic Motivation in Minority Group Children,* NEBRASKA SYMPOSIUM ON MOTIVATION 133 (1967).

[19] The extent to which a student feels he has some control over his own destiny has been singled out as being the primary determinant of student achievement – stronger than all of the school influences combined. This is particularly the case with racial minorities. COLEMAN REPORT 23.

> If a child feels that his environment is capricious, or random, or beyond his ability to alter, then he may

[footnote continued]

ded student suffers a loss of status and reputation among his peers and is frequently branded as a troublemaker by his teachers. This stigma affects Blacks particularly, because teachers perceive Blacks as more rebellious than Whites. *See* p. 9, *supra.* [20]

The impact of a school suspension is greatly magnified when a record is made of the action of the school authorities, as is so often the case. A suspension record can severely handicap the student in obtaining employment or admission to college. Even if a student's suspension is not recorded, or if his record is not revealed by school officials to prospective employers or colleges to which he seeks admittance, the student may often be asked to disclose any record of a suspension. This record compounds the disadvantages to which Blacks are already subject in the job market. *See* pp.13-14, *supra.*

[footnote continued from preceding page]

> conclude that attempts to affect it are not worthwhile, and stop trying. Such a response to one's environment may be quite unconscious, but merely a general attitude that has developed through long experience. The particular relevance of this factor for groups that have been the subject of discrimination is that they have objectively had much less control of their environment than have members of the majority groups. This has been particularly true for Negroes. [*Id.* at 288.]

The Coleman Report's findings were that Blacks and other minority children exhibit a much lower sense of control of their environment than do Whites. In metropolitan areas, about twice the proportion of Blacks as of Whites tend to feel they have no control over their environment. Outside the metropolitan area, the rate is about three times greater. COLEMAN REPORT 289. However, when Blacks do believe they can control their environment, "their achievement is higher than that of Whites who lack that conviction." COLEMAN REPORT 23.

[20] The stigma which results from disciplinary action was a key factor in requiring a pre-expulsion hearing in *Dixon v. Alabama*

[footnote continued]

In sum, a Black child is especially dependent on a public education to increase his opportunities to earn a living, communicate, stimulate his curiosity and interests, and enjoy cultural and social benefits. A suspension of even a few days can have serious, harmful, and permanent consequences on his academic standing, his attitude, his reputation, his likelihood of graduating from high school, and his prospects for employment.

III.

GIVEN THE STRONG INTEREST OF STUDENTS IN GENERAL, BUT PARTICULARLY MINORITY STUDENTS, IN UNINTERRUPTED EDUCATION, AND THE LIMITED BENEFITS TO THE STATE OF SUMMARY ACTION, DUE PROCESS REQUIRES A HEARING PRIOR TO A SUSPENSION FROM SCHOOL.

A. The Right to a Public Education in Ohio is a Protected Liberty and Property Interest Embraced by the Fourteenth Amendment.

Appellants have urged this Court to hold that because the United States Constitution does not explicitly guarantee the right to public education, a state is free to ignore principles of procedural due process when the state grants or withdraws the benefits of its educational system. This argument flies in the face of numerous decisions of this Court, holding that the liberty and property interests protected by constitutional principles of due process need not themselves have an independent constitutional basis.

[footnote continued from preceding page]

State Board of Education, 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961). *See also Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971), where this Court stated:

> Where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.

See, e.g., Board of Regents v. Roth, 408 U.S. 564, 577 (1972); *Bell v. Burson*, 402 U.S. 535, 539 (1971); *Goldberg v. Kelly*, 397 U.S. 254, 262-63 (1970).

Appellees' Brief on the Merits ably documents that the right to a free public education in Ohio is guaranteed by state law. Ohio Const. Art. VI, §2; Ohio Rev. Code, §3313.48. [21] As an entitlement conferred by state constitution and statute, the right to attend the public schools of Ohio is, under the decisions of this Court, a "property" interest protected by the Due Process Clause of the Fourteenth Amendment. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). Certainly, a free public education guaranteed by statute is one of the most important values dispensed by the government to the individual. The right to a public education is an essential prerequisite to earning a living and functioning in modern-day society. [22]

Statutory entitlements of a value to the individual no greater than that of public education have consistently been held by this Court to be protected property rights. *See, e.g., Perry v. Sindermann*, 408 U.S. 593, 603 (1972) (college teacher's understanding that continued employment would be provided absent "sufficient cause"); *Bell v. Burson*, 402 U.S. 535, 539 (1971) (continued possession of a driver's license); *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970) (statutory right to continue to receive welfare benefits). Moreover, in *Goldberg v. Kelly*, this Court, relying on *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S.

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[21] With the exception of South Carolina and Mississippi, every state has a constitutional provision directing the establishment of a system of free public schools. *San Antonio School District v. Rodriguez*, 411 U.S. 1, 112 n.69 (1973) (Marshall, J., dissenting).

[22] For the pecuniary advantages of public education, see p.14, *supra*.

930 (1961), recognized in dictum that the right to attend a public college is a protected property right within the meaning of the Fourteenth Amendment. 397 U.S., at 262 n.9.

Appellees in this case have a constitutionally protected liberty, as well as property, interest in continuing their public education free from arbitrary interference. This Court has consistently held that the right of a parent to educate his or her child,[23] and the implicit right of the child to be educated, are constitutionally protected liberties.[24] *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Pierce v. Society of Sisters*, 268 U.S. 510, 534 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

Appellants, in their Brief on the Merits, argue that even though the abstract right to learn is a "liberty" within the meaning of the Fourteenth Amendment, the right to a public education is not. The decisions of this Court do not support any such distinction. On the contrary, in each of the above-cited cases, the Court upheld the right

[23] Although in some situations the rights of parents to educate their children and the rights of children to be educated may conflict, in this case they do not. School suspensions conflict with the rights of both the parent and child who desire that the child remain in school. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205 (1972), in which the Court refused to differentiate between a parent's right to educate his child and the child's substantive right to a public education because there was no evidence that the children expressed different desires from their parents concerning public school attendance.

[24] In determining whether an interest is a liberty, this Court has considered the criterion of whether the deprivation of the interest resulted in a stigma to the individual's reputation or foreclosed his opportunities. *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972). In practicality, a suspension from public school results in both. The consequences of a suspension are discussed *supra* at pp.10-16.

of the child to attend a particular school or study a particular course at the school. In *Meyer v. Nebraska*, the Court upheld the student's right to obtain instruction in foreign languages in public schools. In *Pierce v. Society of Sisters*, the Court upheld the right of the individual to attend a particular private school instead of a public school. In *Bolling v. Sharpe*, the Court upheld the right of school children in the District of Columbia to attend an integrated school system. Thus, the Court's opinions are clear that at least where the state has established a public school system, students have a constitutionally protected liberty to attend those schools. Moreover, even if one accepted Appellants' definition of liberty as the abstract right to educate oneself, the suspension of the students in the instant case deprived them of liberty because the Ohio public school system does not offer the suspended students any alternative means by which to educate themselves.[25] As a practical matter, high school students are dependent on some form of schooling for education; for this age group, unsupervised self-education is a meaningless substitute for formal schooling.

Appellants' reliance on *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973), for the proposition that public education is not a protected liberty or property within the meaning of the Due Process Clause of the Fourteenth Amendment is misplaced. As noted by the District Court in the instant case,

[25] The mere fact that suspension is a temporary, rather than permanent, deprivation of the student's educational rights is irrelevant to the due process question. When a temporary deprivation results in real and irreparable harm, as here, it is settled that due process principles apply to the state's action. *Bell v. Burson*, 402 U.S. 535 (1971); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969).

> [t]he Supreme Court's holding that the right to an education is not explicitly or implicitly guaranteed by the Constitution does not affect the determination of whether it is a liberty or property which cannot be interfered with by the State without the protection of due procedural safeguards. [I]nterests included within the concepts of liberty and property are often rights created by the State which have no Constitutional status. [Appellants' Jurisdictional Statement at 57 (Appendix B).]

See also Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961), in which the Court said that the question of whether ". . . summarily denying Rachel Brawner access to the site of her former employment violated the requirements of the Due Process Clause of the Fifth Amendment . . . cannot be answered by easy assertion that, because she had no constitutional right to be there in the first place, she was not deprived of liberty or property by the Superintendent's action. 'One may not have a constitutional right to go to Baghdad, but the Government may not prohibit one from going there unless by means consonant with due process of law.' " *Id.* at 894; *accord, Wieman v. Updegraff*, 344 U.S. 183 (1952).

B. The Student's Interest in Being Protected from Arbitrary and Unfair School Suspension Clearly Outweighs the State's Interest in Summary Disciplinary Procedures.

We have demonstrated above that Fourteenth Amendment due process principles apply to this case, since suspensions from public school affect students' constitutionally protected liberty and property interests. Those principles demand that the state accord students a hearing *prior* to suspension, because the possibly irreparable injury

to the student caused by suspension far outweighs any interest which the state might have in summary suspension procedures.[26]

In determining whether in a given situation due process requires a hearing prior to the state's deprivation of a citizen's liberty or property, this Court traditionally has utilized a balancing test. The Court has weighed whether the state's interest in deferring or foregoing a hearing overcomes the individual's interest in being protected from arbitrary and possibly mistaken action. *See, e.g., Arnett v. Kennedy*, 42 U.S.L.W. 4513, 4531 (U.S., 1974) (Powell, J., concurring); *Goldberg v. Kelly*, 397 U.S. 254, 263-66 (1970).

Appellants' assertion that the state must provide a hearing only if the citizen will suffer "grievous loss" is unsupported by any decision of this Court. While Appellants are correct that some opinions have noted that grievous loss might follow arbitrary state action, in each case the Court cited the large potential loss as relevant to a balancing process, and not as an absolute threshold standard. *See Morrissey v. Brewer*, 408 U.S. 471 (1972); *Goldberg v. Kelly*, 397 U.S. 254 (1970). Indeed, in *Fuentes v. Shevin*, 407 U.S. 67 (1972), the Court sharply dismissed the argument that due process should attach only to a deprivation of "necessary" items. It said that to read *Goldberg v. Kelly* in such a manner would mark "a radical departure from established principles of procedural due process." 407 U.S., at 88.

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[26] Of course, a showing by the state of a *bona fide* emergency situation at the school might justify some departure from procedural regularity until the crisis had passed. Wright, *The Constitution on Campus*, 22 VAND. L. REV. 1027, 1074-75 (1969). No such situation has been alleged in the instant case, however.

Nevertheless, by whatever standard one chooses to measure loss, the harm of a suspension to a student, particularly a minority student, is in fact grievous. As discussed at pp.10-16, *supra*, suspension can result in incalculable educational, as well as psychological, damage. This has been recognized by numerous lower courts which, like the court below, have required public schools to hold hearings prior to suspensions.[27] *See, e.g., Sullivan v. Houston Independent School District*, 475 F.2d 1071, 1072-73 n.3 (5th Cir.), *cert. denied*, 94 S. Ct. 461 (1973) (refusal to vacate injunction requiring notice and "formal hearing" for suspensions of more than three days); *Black Students v. Williams*, 470 F.2d 947 (5th Cir. 1972) (students must receive hearing prior to ten-day suspension); *Vail v. Board of Education*, 354 F. Supp. 592 (D.N.H. 1973) (consultation must precede any suspension and formal hearing must precede suspension for more than five days); *Givens v. Poe*, Civil No. 2615 (W.D.N.C., Nov. 1, 1972), *implementing* 346 F. Supp. 202 (W.D.N.C. 1972) (requiring for all suspensions of ten days or less written notice and hearing at which student can present witnesses); *Mills v. Board of Education*, 348 F. Supp. 866, 878 (D.D.C. 1972) (hearing ordered prior to suspension

[27] The distinctions between the detrimental effects of an expulsion, an indefinite suspension, and a shorter suspension are distinctions of degree only, and due process protections are not dependent on the number of days of suspension. *Fuentes v. Shevin*, 407 U.S. 67, 86 (1972). On the other hand, there are lesser sanctions than suspensions, such as after-school detention and the award of demerits, which are so minor and have such minimal effect on the student's education and opportunities that a hearing may not be required. *See, e.g., Hagopian v. Knowlton*, 470 F.2d 201, 211 (2d Cir. 1972) (in which the court indicated in dictum that a hearing would not be required prior to an award of demerits provided that demerits did not accumulate to the point of endangering the student's enrollment).

for any period over two days); *Stricklin v. Regents of University of Wisconsin*, 297 F. Supp. 416 (W.D. Wis. 1969), *appeal dismissed*, 420 F.2d 1257 (7th Cir. 1970) (specification of charges, notice of hearing, and hearing must precede 13-day "interim" suspension); *Mello v. School Committee*, Civil No. 72-114 (D. Mass., Apr. 6, 1972) (court restrained any exclusion from school prior to adequate hearing).

Appellants assert that the interest of the schools in taking summary action to suspend a student is to preserve order and discipline and that it is not feasible to provide hearings on the merits of suspensions. Yet Appellants have failed to explain how, and to what extent, according hearings would interfere with the preservation of order and discipline,[28] and it is difficult to understand how providing hearings on school suspensions is less feasible than providing hearings prior to termination of welfare benefits, as required by *Goldberg v. Kelly*, 397 U.S. 254 (1970). The cost to the school system of providing hearings prior to suspension is minimal – slightly increased expense and demands on staff time.[29] In almost all cases, school officials can prevent any interruption of the educational process by holding hearings after school hours.[30]

[28] The provision of fact-finding hearings prior to suspensions might actually aid in preserving order and discipline by isolating the students who are, in fact, the "troublemakers" rather than suspending the mistakenly accused.

[29] *See generally Stanley v. Illinois*, 405 U.S. 645, 656 (1972) (states must bear the costs of providing procedural due process, since "the Constitution recognizes higher values than speed and efficiency").

[30] Amici have been advised that the Amicus Brief to be filed by the Children's Defense Fund will address itself in detail to the issue of cost to the school system of providing hearings

This Court has held, with regard to desegregation, that disruption in the schools could not justify depriving students of their constitutional rights. *Cooper v. Aaron*, 358 U.S. 1, 16 (1958). Interference with a student's right to uninterrupted education is valid only if the school authority sustains the burden of showing that it acted reasonably to prevent substantial disruption or material interference with school activities. *Tinker v. Des Moines School District*, 393 U.S. 503 (1969); *Crews v. Cloncs*, 432 F.2d 1259 (7th Cir. 1970). Moreover, even if the school system can show disruption or interference with school activities, it must also sustain the burden of demonstrating that it is unreasonably difficult to hold a hearing prior to a temporary suspension. *Stricklin v. Regents of University of Wisconsin*, 297 F. Supp. 416, 420 (W.D. Wis. 1969), *appeal dismissed*, 420 F.2d 1257 (7th Cir. 1970). In an emergency situation, the balance of interests might shift, so that the school system would be required to provide a hearing after the deprivation, but as early as possible. If the state sustains its burden of showing that

> . . . it is impossible or unreasonably difficult to accord the student a preliminary hearing prior to an interim suspension, procedural due process requires that he be provided such a preliminary hearing at the earliest practical time. [*Id.; accord, Pervis v. LaMarque Independent School District*, 466 F.2d 1054 (5th Cir. 1972).]

In determining when it is impossible or unreasonably difficult to provide a student with a hearing prior to a suspension, the balance should be struck in favor of providing the hearing, even if it is necessary to reduce the formality of the hearing to do so. As the interruption of the student's education and the collateral consequences of the discipline become less severe and the burden to the school system in holding the hearing increases, the formality and procedural requirements of a hearing could be reduced. *See Board of Regents v. Roth*, 408 U.S. 564, 570 n.8 (1972). But the hearing accorded a suspended student never should be dispensed with altogether.

CONCLUSION

The issue in this case is two-fold: 1) whether due process requires any hearing on the merits of a suspension from public school for up to ten days; and 2) the timing of the hearing. The Court should be mindful that the resolution of these issues will have great impact, not only on a small group of students in Ohio, but on public school students throughout the country. The available evidence of disproportionate suspensions of Black students suggests that there is serious risk of racial discrimination in school disciplinary proceedings. A hearing prior to suspension is essential to guard against the risk of such arbitrary action.

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[redacted]

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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, et al.,
Appellants

v.

EILEEN LOPEZ, et al.,
Appellees

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

BRIEF OF AMICI CURIAE

IDENTIFICATION AND PURPOSE OF AMICI CURIAE

Amici Curiae are among those groups and individuals who are professionally committed to the improvement of education in the public schools. They believe that such improvement can come about only through a process of experimentation and innovation involving the utilization of a variety of educational tools. Such experimentation and innovation are not possible in a situation where rigid constitutional formulas have been imposed upon the public schools.

One of the tools utilized in the educational process in Ohio is the short-term disciplinary suspension. The use of such suspensions is a part of education. It is vital both to the maintenance of an orderly process of education for all

who are in attendance in public schools and to the development of a sense of discipline and control in individual students. The importance of this tool is indicated by the following figures: in the Cincinnati School District in the school year 1972-3, there were 4,054 short-term suspensions out of a total student enrollment of 81,907; in the Akron City School District in the school year 1972-3, there were 7,352 short-term suspensions out of a total enrollment of approximately 57,000 students; and in the Cleveland City School District in the school year 1972-3, there were 14,598 short-term suspensions out of a total student enrollment of 142,053. These figures make absolutely clear that a constitutional requirement of a hearing prior to the short-term suspension of every student would render this basic tool unavailable. The time of administrators, teachers, and students consumed in hearings in this number of cases would obviously be enormous.

The importance of the student suspension device to the educational process in Ohio is related to the fact that Ohio's compulsory attendance law applies to students between the ages of 6 and 18 years. This is the longest period required by any state. States where there are fewer older students and different disciplinary problems may well find that the Ohio procedure is unnecessary, unsuitable or even undesirable. It is the position of *Amici Curiae* that such judgments are best left to the administrators, legislators and ultimately to the people of the various states. Only through a flexible process whereby individual states are allowed to utilize a variety of educational tools can the goal of an improved educational process be attained.

DISCUSSION

I. Public Classroom Instruction Is Not An Interest Protected By The United States Constitution.

Appellees were suspended from school under authority of a statute which provided:

> "The superintendent of schools of a city or exempted village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school *for not more than ten days.* Such superintendent or executive head may expel a pupil from school. Such superintendent, executive head, or principal shall *within twenty-four hours* after the time of expulsion or suspension, *notify the parent* or guardian of the child, and the clerk of the board of education in writing *of such* expulsion or *suspension including the reasons therefor.* The pupil or the parent, or guardian, or custodian of a pupil so expelled may appeal such action to the board of education at any meeting of the board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester. Ohio Revised Code, § 3313.66 (emphasis supplied).

Each suspension was for a period not to exceed ten (10) days. Neither notice nor a hearing was given prior to the suspensions.

Appellees would like the above statute declared unconstitutional. They persuaded the three-judge trial court that education is a "liberty" protected by the Due Process Clause of the Fourteenth Amendment and that a suspension constituted a deprivation from education.

In revelent part, Section I of the Fourteenth Amendment to the United States Constitution declares:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law. . . ."

There is no claim that the Constitution explicitly protects education. Whether the Constitution implicitly

protects education as a "liberty" under the Due Process Clause is the threshold question for this Court. The three-judge trial court concluded education was a "liberty" but in so doing was careful to observe: "The Supreme Court has not resolved the question of whether a student's statutory right to an education is a liberty which is protected by due process of law." (Jurisdictional Statement, p. 55.)

Not every "interest" is entitled to due process. It is only those coming within the Fourteenth Amendment's protection of liberty and property. This Court reiterated this limitation in *Board of Regents of State Colleges* v. *Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed. 2d 548 (1972) where Mr. Justice Stewart declared:

> "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated the right to some kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite." 408 U.S. at 569-70.

Attendance at public classroom instruction is not a protected interest. This conclusion is reached from a review of this Court's approach to determining the kinds of liberty interests which are entitled to due process protection.

Fourteenth Amendment "liberty" is something more than exemption from physical restraint. Thus, it was established in *Meyer* v. *Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), that a blanket prohibition against the teaching of German constituted an infringement on the teacher's "liberty" to teach and the "liberty" of parents to obtain such teaching. The test suggested by the Court was whether the interest for which protection was sought was a privilege ". . . long recognized at common law as *essential* to the orderly pursuit of happiness by free men." 262 U.S.

at 399 (emphasis supplied). This test was amplified by Mr. Justice Cardozo in *Palko* v. *State of Connecticut*, 302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 288 (1937). The question to be asked, said the Court, was whether failure to grant due process would violate a *fundamental* principle of liberty which lies at the base of our civil and political institutions: "Does it violate those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions?' " 302 U.S. at 328. More recently in *Poe* v. *Ullman*, 367 U.S. 497, 81 S.Ct. 1752, 6 L.Ed.2d 989, (1960), Mr. Justice Harlan in his dissenting opinion carefully reviewed this Court's thinking with respect to the interests protected by Fourteenth Amendment due process. He concluded that the interests protected are those which are *fundamental*; which belong to the citizens of all free governments.

> "However it is not the particular enumeration of rights in the first eight Amendments which spells out the reach of Fourteenth Amendment due process, but rather, as was suggested in another context long before the adoption of that Amendment, those concepts which are considered to embrace those rights 'which are . . . fundamental; which belong . . . to the citizens of all free governments, *'Corfield* v. *Coryell*, 4 Wash, C.C. 371, 380, for 'the purpose [of securing] which men enter into society,' *Calder* v. *Bull*, 3 Dall. 386, 388." 367 U.S. at 541.

Again in *Duncan* v. *Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed. 2d 491, (1968), this Court reiterated the standard that an interest is not protected unless it is *fundamental*:

> "The question has been asked whether a right is among those ' "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions," ' *Powell* v. *State of Alabama*, 287 U.S. 45, 67 (1932); whether it is '*basic* in our system of jurisprudence,' in re *Oliver*, 333 U.S. 257, 273 (1948);

and whether it is 'a fundamental right, essential to a fair trial,' *Gideon* v. *Wainright*, 372 U.S. 335, 343-344 (1963); *Malloy* v. *Hogan*, 379 U.S. 1, 6 (1964); *Pointer* v. *State of Texas*, 380 U.S. 400 (1965)." 391 U.S. at 148-49.

Perhaps most recently this "fundamental" or "implicit-in-the-concept-of-ordered-liberty" analysis was followed in *Roe* v. *Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1972) where Mr. Justice Blackmun recognized that the interests protected are only those personal rights "that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty', *Palko* v. *Connecticut*, 302 U.S. 319, 325 (1937) . . . ." 410 U.S. at 152.

Education and the financing thereof were considered by this Court in *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed. 2d 16 (1973). There the District Court's finding "that education is a fundamental right or liberty" was expressly rejected. 411 U.S. at 37. While acknowledging that education is of undisputed importance, Mr. Justice Powell was clear that education is neither explicitly nor implicitly afforded protection by the Constitution:

> "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying that it is implicitly so protected." 411 U.S. at 35.

In arriving at this conclusion, the Court stated one of the basic questions which it had to consider:

> "It is this question—whether education is a fundamental right, in the sense that it is among the rights and liberties protected by the Constitution—which has so consumed the attention of Courts and commentators in recent years." 411 U.S. at 29.

In *Rodriguez* this Court was, of course, faced with questions arising under the Equal Protection Clause. It

nevertheless based its conclusion on precisely the same kind of analysis which this Court has used in determining what interests are protected by the Due Process Clause. Its analysis was directed to the question of whether or not the interest was fundamental, that is, entitled to either explicit or implicit constitutional protection. In agreeing with the majority that it was entitled to neither, Mr. Justice Stewart stated:

> ". . . the Texas system [of financing education] impinges upon no substantive constitutional rights or liberties." 411 U.S. at 62.

The potential significance for due process purposes of this Court's determination that under the Equal Protection Clause education is not a fundamental right explicitly or implicitly protected by the Constitution is underscored by the earlier Supreme Court holding in *Bolling* v. *Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954). There the Court was presented with the question of whether its equal protection analysis in *Brown* v. *Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954) extended to integration of the District of Columbia Schools. The Court concluded that the concept of liberty within the Due Process Clause of the Fifth Amendment was such that an individual was entitled to be free from segregation on the basis of race in public education. In so doing, the Court declared:

> "But the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive." 347 U.S. at 499.

Moreover, the analysis of this Court in *Morrisey* v. *Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972), parallels that employed in the *Rodriguez* opinion. Mr. Chief Justice Burger stated in *Morrisey*: "The question is not merely the 'weight' of the individual's interest, but whether the nature of the interest is one within the con-

templation of the liberty or property language of the Fourteenth Amendment." 408 U.S. at 471. And Mr. Justice Powell in speaking for the Court in *Rodriguez* declared:

> "Thus the key to discovering whether education is 'fundamental' is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution." *Rodriguez*, 411 U.S. at 33-34.

This Court then, both in *Rodriguez, supra*, and in *Morrissey, supra*, looked to the nature rather than to the importance of the interest in question. Further, this Court's analysis in *Rodriguez, supra*, was directed to the question of whether or not a right to education was entitled to either explicit or implicit constitutional protection. The due process cases discussed above looked to the same question. Explicit protections are those guaranteed by the Bill of Rights. They have been selectively incorporated into the Fourteenth Amendment. Implicit protections are those intrinsic to our concept of ordered liberty. In holding that a right to education is not entitled either to explicit or implicit constitutional protection for purposes of the Equal Protection Clause, this Court in *Rodriguez, supra*, undertook the same analysis and answered the very questions raised in the due process cases. Education is undeniably important. This alone, does not entitle it to Constitutional protection.

II. Suspensions Not To Exceed Ten Days Do Not Interfere With Education And The Absence From Classroom Learning Cannot Be Shown To Constitute A Grievous Loss.

Moreover, if this Court were to conclude that education is a fundamental right entitled to the protection of

the Due Process Clause of the Fourteenth Amendment, the statute under attack does not violate the Constitution. The section of the Ohio Revised Code which appellees would strike down, R.C. § 3313.66, expressly limits the length of a suspension to ten (10) days. It requires that notice of the suspension together with the reasons in support thereof be supplied to the parents within twenty-four (24) hours of the suspension. In short, the legislature has assured that the interruption from classroom learning is minimal.

This Court has recently declared that procedural due process does not apply unless it can be shown the individual is condemned to suffer grievous loss. *Morrissey* v. *Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). In speaking for the Court, Mr. Chief Justice Burger declared:

> "Whether any procedural protections are due depends on the extent to which an individual will be 'condemned to suffer grievous loss.' *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring), quoted in *Goldberg* v. *Kelly*, 397 U.S. 254, 263 (1970)." 408 U.S. at 481.

This language adopted from Mr. Justice Frankfurter's concurring opinion in the *McGrath* case, *supra*, followed his observation that due process is not to be tested by mere abstract generalities. A court must consider all of the relevant interests.

> "The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished — these are some of the considerations that must enter into the judicial judgment." *McGrath*, 341 U.S. at 163.

This consideration of all relevant interests would include a recognition of the need for discipline as a part of any properly functioning educational system. It would recognize, as have Ohio's courts, that discipline is very much a part of the system of education devised by Ohio's legislature. Thus, in the context of a suspension for a long-hair violation of a dress code, it was argued by plaintiffs that discipline is no part of the educational process. *Laucher* v. *Simpson*, 28 Ohio App. 2d 195, 276 N.E. 2d 261 (Ct.App. Knox Co., 1971). Plaintiffs made "... a direct challenge to what they chose to describe as 'discipline for the sake of discipline'...". 28 Ohio App. 2d at 197. The court unequivocally declared:

> "Discipline is indeed a part of the educational process and we so hold.
>
> "Our system of public education, established to equip citizens with the skills they need to stay free under a rule of law must, if it is to succeed, thoroughly inform its students that the liberty and rights of all depend upon the willingness of the individual to discipline himself to respect the rights of others and that he learn to subordinate his individual desires when they conflict with the legitimate interests of others. Disciplined respect for the rights of others is essential to the survival of liberty." 28 Ohio App. 2d 198.

This sentiment was echoed by Mr. Justice Black in his dissent in *Tinker* v. *Des Moines Community School District*, 393 U.S. 503, 524, 89 S.Ct. 733, 741, 21 L.Ed.2d 731, 743 (1969):

> "School discipline, like parental discipline, is an integral and important part of training our children to be good citizens—to be better citizens. Here a very small number of students have crisply and summarily refused to obey a school order designed to give pupils who want to learn the opportunity to do so. One does not have to be a prophet or the son of a prophet to know that after the court's holding today, some students in Iowa schools, and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders." 393 U.S. at 525.

Both this Court and Ohio's courts have recognized discipline as educational. In view of the short duration of student suspensions under Ohio law and given the purpose and function of those suspensions, it can hardly be claimed that their effect is to "stigmatize" suspended students (*see Roth, supra*, 408 U.S. at 573). Indeed the very hearing which appellees argue for is more likely to cause stigmatization. An examination of the facts in the case at bar confirms the absence of stigma or adverse effect on the appellees. Each of them went on to graduate with his or her class at a grade point average equal to or better than that possessed at the time of suspension. Accordingly, this Court is not dealing with a state-imposed stigma that can be shown to have had an effect on any specific interest of the appellees, such as an interest in preserving their good names or an interest in not having other opportunities foreclosed. In short, even if this Court were to hold that a student does have a due process right to attend the public schools, that right is not implicated by the Ohio Statute.

III. Student Disruptions Create An Emergency In The Educational Process Requiring A Flexible Response From Teachers And School Administrators.

Pursuing further Mr. Justice Frankfurter's analysis, there are additional reasons for concluding that short-term suspensions do not violate due process. One of these is the burden that would be imposed on administrators, teachers and school districts if they were required to provide notice and a hearing before suspension. Amici have described at the outset of this brief the nature of their interest. (pp. 1-2). In particular, reference was made to more than fourteen thousand (14,000) suspensions in the Cleve-

land City Schools during the 1972-73 school year. Requiring notice and a hearing for each of these suspensions would, for all practical purposes, mean the end to short-term suspensions as a disciplinary tool. As Mr. Justice Black's dissent in *Tinker* v. *Des Moines* wisely observed, the students learning they are entitled to prior notice and a hearing are going to defy their teachers with still greater frequency.

The District Court for the Southern District of Florida was presented with a statute similar to Ohio's and it was argued, as in the case at bar, that the statute was unconstitutional because it did not provide for notice or a hearing prior to suspension. The court assumed without discussion that classroom education was an interest protected by due process. It reasoned that a resolution of whether plaintiffs were denied their constitutional rights required a weighing and contrasting of the gravity of those rights with the interest of the state in maintaining discipline in the educational system. *Banks* v. *Board of Public Instruction of Dade County*, 314 F.Supp. 285 (S.D. Fla. 1970), *vacated*, 401 U.S. 988 (1971), *aff'd per curiam*, 450 F.2d 1103 (5th Cir. 1971). The court's careful consideration of the interests involved is set forth at length:

> "Providing a hearing to a student prior to his suspension for misconduct itself produces a disruptive effect upon the educational process. Consider, for example, misconduct which occurs during class. If the misconduct in the teacher's opinion justifies suspension, it would also seem to require that the student be immediately removed from the room as the teacher must be able to continue the teaching process without undue interference. If a hearing is to be held prior to suspension the teacher must leave the room with the student or leave a later scheduled class in order to offer testimony. Those students who were witness to the misconduct must likewise leave the room or spend class time preparing written statements to be presented at the hearing. If the teacher leaves the room the class in the meantime must be left either without supervision or under the guidance of one who is ill-prepared or needed elsewhere. In any event the likelihood is that the remaining students would suffer in their pursuit of an education.
>
> "If the misconduct should occur in a common area, such as the cafeteria, the hallways, or a recreation area, it is likely that a number of staff and student witnesses must be called out of class to 'testify' at such prior hearing, thus multiplying the disruptive effect on the educational process. The parents, of course, must be notified of the hearing and told to come to the school immediately to confer with their child and help prepare his 'case.'
>
> "If, on the other hand, both student and teacher remain in class following the incident until a later time, perhaps the end of the school day, the authority of the teacher and the respect in which he is held will suffer. Moreover, allowing the student who has misbehaved to remain in class is certain to have a disruptive effect.
>
> "If the hearing is to be held after school, student witnesses must be kept late to testify and the 'offender' will no doubt be conferring with them throughout the remainder of the day both in and out of class in order to prepare for the hearing. Of course, there is the possibility that the teacher might remain in class and just send the student to the principal to be kept in detention until the hearing. But this alternative would prevent the student from conferring with witnesses and preparing his case. It is apparent that providing public school students with hearing prior to suspension would result in a disruption of the educational process which cannot be permitted." 314 F.Supp. at 291-92.

The opinion of the court in *Banks, supra*, makes clear that the holding of a hearing prior to the suspension of a student will have a disruptive effect regardless of the way in which it is done. If the student is allowed to remain

in the classroom until such time as a hearing can be held, the authority of the teacher will be directly undermined. If the student and teacher, in addition to other students and teachers who may have been witnesses, are directly removed from the classroom for purposes of holding a hearing, the educational process for the remaining students will be delayed until such time as the hearing is completed. These facts underscore the confusion of the trial court in the instant matter: virtually all suspension situations may be characterized as "emergencies" for they interfere with the continuation of the educational process.

For this reason, school suspensions necessarily fall within the "emergency" exception to the rule that a prior hearing should be held where due process interests are implicated (*see Bell* v. *Burson*, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591, 29 L.Ed.2d 90, 96 (1971). One case where this exception was applied is *Phillips* v. *Commissioner*, 283 U.S. 589, 515 S.Ct. 608, 75 L.Ed. 1289 (1931). That case involved "the need of the government to promptly secure its revenues" (283 U.S. at 596), and the court concluded that "delay in the judicial determination of property rights is not uncommon where it is essential that governmental needs be *immediately* satisfied." 283 U.S. at 597 (emphasis supplied). As the opinion in *Banks, supra*, so clearly indicates, the importance of removing the disruptive student from the classroom *immediately* cannot be minimized. It is submitted that the interests of schools and students in a continuation of the educational process have an importance at least equal to "the need of the government promptly to secure its revenues."

This is all the more true where, as in the present case, the disruption involves a large number of students affecting the entire school. (In this case, at least 75 students were suspended. See Appellants' Appendix, Vol. 2 of 3, p. 120.) If the school were forced to provide a hearing prior

to the suspension of each student, the only solution available to school officials would be the closing of the schools.

Amici have set forth in Appendix A a number of cases from the federal courts where, without discussion, it is assumed that education is a protected interest under the Due Process Clause and a balancing approach has been employed to determine the absence of need for due process. The balancing approach was also advocated in Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline*, 119 U. Pa. L. Rev. 545, 573-77 (1971).

Moreover, practicality is going to require some form of balancing test. For example, why stop with suspension from classroom teaching? Questions will be raised with respect to the need for notice and a hearing prior to the administration of corporal punishment (*Gonyaw* v. *Gray*, 361 F.Supp. 366 [D.Vt. 1973]), or before the exclusion of students from interscholastic sports (*Kelly* v. *Metropolitan County Bd. of Ed. of Nashville, etc.*, 293 F.Supp. 485 [M.D. Tenn. 1968]), or indeed before a pupil may receive a failing grade (*Connelly* v. *University of Vermont and State Agricultural College*, 244 F.Supp. 156 [D.Vt. 1965]). And if these areas are all entitled to due process protection, why isn't a pupil excluded from art, music and drama courses because the school he attends cannot afford the courses entitled to challenge the decision which excludes him? Why doesn't due process entitle him to show his exclusion is the result of an arbitrarily drawn boundary line, which keeps him from attending a school building in the same district where the courses are taught. It was in part for this reason that Mr. Justice Powell in his concurrence in *Cleveland Board of Education* v. *LaFleur*, ... U.S. ..... , 94 S.Ct. ....., 39 L.Ed. 2d 52, 69-70 (1974) declared:

> "School boards, confronted with sensitive and widely variable problems of public education, must be

accorded latitude in the operation of school systems and in the adoption of rules and regulations of general application. E. g., *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 42-43 (1973). A large measure of discretion is essential to the effective discharge of the duties vested in these locals, often elective, governmental units. My concern with the Court's opinion is that, if carried to logical extremes, the emphasis on individualized treatment is at war with this need for discretion. Indeed, stringent insistence on individualized treatment may be quite impractical in a large school district with thousands of teachers."

Likewise, Mr. Justice Black was reluctant to indicate that this Court would inject the federal courts into the public school systems of the various states. *Karr* v. *Schmidt*, 401 U.S. 1201, 91 S.Ct. 592, 27 L.Ed.2d 797 (1971). In pertinent part he stated:

> "I refuse to hold for myself that the federal courts have constitutional power to interfere in this way with the public school system operated by the states. And I furthermore refuse to predict that our court will hold they have such power. It is true that we have held that this court does have power under the Fourteenth Amendment to bar state public schools from discriminating against Negro students on account of their race, but we did so by virtue of a direct, positive command in the Fourteenth Amendment, which like the other Civil War Amendments, was primarily designed to outlaw racial discrimination by the states. There is no such direct, positive command about local school rules with reference to the length of hair state school students must have. And I cannot now predict this court will hold that the more or less vague terms of either the Due Process or Equal Protection Clause have robbed the states of their traditionally recognized power to run their school systems in accordance with their own best judgment as to appropriate length of hair for students." 401 U.S. at 1202.

This same reluctance is expressed in *Epperson* v. *Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 266, 270, 21 L.Ed.2d 228, 234 (1968).

Indeed, in *Waugh* v. *Board of Trustees of the University of Mississippi*, 237 U.S. 589, 35 S.Ct. 720, 59 L.Ed. 1131 (1915), students sought the protection of the Fourteenth Amendment for their claimed right to affiliate with a fraternity at an educational institution. A state statute prohibited such fraternities and the court concluded this did not constitute a denial of due process of law. In so doing, the court declared:

> "It is not for us to entertain conjectures in opposition to the views of the State and annul its regulations upon disputable considerations of their wisdom or necessity. Nor can we accommodate the regulations to the assertion of a special purpose by the applying student, varying perhaps with each one and dependent alone upon his promise.
>
> "This being our view of the power of the legislature, we do not enter upon a consideration of the elements of complainant's contention. It is very trite to say that the right to pursue happiness and exercise rights and liberty are subject in some degree to the limitations of the law, and the condition upon which the State of Mississippi offers the complainant free instruction in its University, that while a student there he renounce affiliation with a society which the State considers inimical to discipline, finds no prohibition in the Fourteenth Amendment." 237 U.S. at 597.

The rationale underlying the repeated affirmations by this Court that educational judgments are best left to school officials is based on the expertise of such officials in the education area. Beyond the question of expertise is the need for flexibility in the operation of our public schools. An examination of the statistical breakdown on school suspensions contained in Appendix B underscores

the need for such flexibility. These statistics demonstrate the diversity in age, circumstances, and type of infraction with which school officials must deal. The imposition of a single, constitutionally-mandated procedure would destroy the flexibility needed for dealing with these diverse disciplinary problems. Furthermore, it would preclude the immediate response necessary to prevent the disruption of the educational process.

CONCLUSION

For all of the foregoing reasons *Amici Curiae* respectfully submit that this Court should reverse the judgment of the trial court and enter judgment for appellants upholding the constitutionality of Ohio's suspension statute.

Respectfully submitted,

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Appendix A – The Federal Courts Have In General Upheld The Constitutionality of Short-Term Suspensions Although Neither Prior Notice Nor Prior Hearing Was Provided. Cases Upholding Suspensions Are Set Forth Chronologically From 1969 Through 1973.

– In *Baker* v. *Downey City Board of Education*, 307 F.Supp. 517 (C.D. Cal. 1969), the constitutionality of a California statute under which a student was suspended for a ten-day period was upheld. In accepting this procedure, the court noted:

> "Due process is not a fixed, inflexible procedure which must be accorded in every situation. It varies with the circumstances involved. In the instant case, the school officials were charged with the conduct of the educational program and if the temporary suspension of a high school student could not be accomplished without first preparing specifications of charges, giving notice of hearing, and holding a hearing, or any combination of these procedures, the discipline and ordered conduct of the educational program and the moral atmosphere required by good educational standards, would be difficult to maintain." 307 F.Supp. at 522-23.

– In *Hernandez* v. *School District Number One, Denver, Colorado*, 315 F.Supp. 289 (D.Colo. 1970) the constitutionality of a Colorado statute under which a school principal was authorized to suspend a student for a period up to twenty-five days was challenged. The court rejected this challenge and emphasized the rights of the other students in the educational process:

> "There is no evidence that the suspension period of twenty-five days is an unreasonable time to allow the principal and superintendent to attempt to resolve problems of discipline and behavior which is inimicable to the welfare, safety, or morals of other pupils, before resorting to expulsion." 315 F.Supp. at 293-94.

– In *Whitfield* v. *Simpson*, 312 F.Supp. 889 (E.D. Ill. 1970), a student was suspended for two seven-day periods and subsequently expelled. The court upheld the constitutionality of the Illinois statute in question, and noted the importance of discipline both to the functioning of the schools and to the development of the individual student:

> "While the principle use to which the schools are dedicated is to accommodate students during prescribed hours for certain types of activities, discipline and social behavior are not only an inevitable part of

the process of schooling, they are also an important part of the educational process." 312 F.Supp. at 893.

— In *Banks* v. *Board of Public Instruction of Dade County*, 314 F.Supp. 285 (S.D. Fla. 1970), *vacated*, 401 U.S. 988 (1971), *aff'd per curiam*, 450 F.2d 1103 (5th Cir. 1971), a ten-day suspension was upheld. There was no hearing before the suspension. In pointing to the context in which due process rights were to be applied, the court stated:

> "The right to a hearing, when analyzed within the setting of the public school system, is necessarily subject to limitations imposed in order to insure the orderly administration of education and to preserve both decorum in the classroom and respect for teachers and administrators." 314 F.Supp. at 291.

— In *Farrell v. Joel*, 437 F.2d 160 (2d Cir. 1971), the Second Circuit Court of Appeals upheld a ten-day suspension. The court distinguished a suspension for this duration from both a long-term suspension and from an expulsion in ruling that,

> ". . . the nature of the sanction affects the validity of the procedure used in imposing it." 437 F.2d at 162.

— In *Jackson* v. *Hepinstall*, 328 F.Supp. 1104 (N.D.-N.Y. 1971), the constitutionality of a five-day suspension without prior hearing was challenged. Characterizing five days as a "reasonable suspension period," the District Court made reference to the Supreme Court's decision in *Tinker* in

> "affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." 328 F.Supp. at 1107.

— In *Tate* v. *Board of Education of Jonesboro, Ark., Special School District*, 453 F.2d 975 (8th Cir. 1972),

students were suspended for a five-day period for walking out of a pep rally. Subsequent to the suspensions, the students were notified of the causes for their suspensions and were given an opportunity to attend a question and answer period relating to the suspensions. In ruling that this procedure satisfied the requirements of due process, the court considered both the "mildness" of the penalty and the need to relate due process requirements to the "time, place and circumstances" of discipline in the schools.

— In *Linwood* v. *Board of Education, City of Peoria, School District No. 150, Illinois*, 463 F.2d 763 (7th Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972), the Seventh Circuit Court of Appeals upheld the constitutionality of a seven-day suspension. In considering the requirements of the Due Process Clause, the court distinguished a school suspension from a criminal proceeding and from a juvenile delinquency proceeding. The court concluded:

> "We are of the view that a suspension for so relatively a short period for reasonably proscribed conduct is a minor disciplinary penalty which the legislature may elect to treat differently from expulsion or prolonged suspension without violating the constitutional right of the student. . . . Certainly, the imposition of disciplinary measures such as after-school detention, restriction to the classroom during free periods, reprimand, or admonition does not *per se* involve matter rising to the dignity of constitutional magnitude. We conclude that insofar as the requirement of a hearing is concerned it was within the discretion of the lawmakers to equate suspensions of 7 days or less with other minor disciplinary penalties although they did reserve the imposition of this particular sanction to school officials of supervisory status." 463 F.2d at 768-69.

— In *Black Coalition* v. *Portland School District No. 1*, 484 F.2d 1040 (9th Cir. 1973), the Ninth Circuit Court of Appeals sustained the validity of temporary suspensions

ranging from six days to six weeks where no prior hearing was held. In its opinion, the court compares the minimal affect on the individual student of such a suspension with the overriding importance to the educational system of maintaining proper order where it states:

> "Brief suspensions are often justified by the interest of school officials in maintaining an atmosphere conducive to learning. The injury caused to assaultive and disruptive students by brief suspensions is minimal compared to the danger posed to the normal functioning of an educational institution by the continued presence of such students." 484 F.2d at 1044.

Appendix B

Summary of Suspensions for the School Year 1972-73

For the Cincinnati City School District

LEVEL	SEX			AGE								GRADE						Insubordination	Behavior Problem	Class Cut & Truancy	Assault	Extortion - Theft	Smoking	Fighting	Miscellaneous	Handled By	
	M	F	Total	10	11	12	13	14	15	16	17	18+	7	8	9	10	11	12									School	Center
Senior																												
September	7	7	14					1	3	5	5				9	3	2	4	1	3	1			5		12	2
October	78	39	117					8	30	37	37	5		16	59	30	12	23	1	28	6	1	20	24	14	107	10
November	82	35	117					5	27	48	29	8		17	60	32	8	23	12	29	15	2	6	16	14	103	14
December	105	37	142						40	56	37	9		8	89	25	20	23	31	44	9	1	7	22	5	126	16
January	94	52	146					9	47	47	33	10		28	71	34	13	28	5	64	6	1	6	19	17	130	16
February	76	48	124					5	33	47	28	11		18	67	28	11	30	4	36	2	1	27	12	12	115	9
March	174	54	228					2	43	68	83	32		15	117	48	48	43	5	91	8	1	32	31	17	214	14
April	95	29	124					7	26	36	35	20		16	58	26	24	34	4	38	3	1	9	19	16	116	8
May	104	44	148					5	35	51	44	13		19	81	34	14	35	9	59	4		16	17	8	143	5
June	16	3	19						3	8	4	4			11	5	3	6	3	4	2		2		2	19	
Sub-Total	831	348	1179					42	287	403	335	112		137	622	265	155	249	75	396	56	8	125	165	105	1085	94
Junior																											
September	55	24	79			4	18	32	21	4			16	30	33				16	6	16	9	8	6	14	4	77	2
October	117	69	186		1	20	53	70	38	3	1		60	76	50				40	18	41	23	2	8	47	7	164	22
November	152	71	223		1	34	61	78	41	7	1		78	70	75				31	14	47	26	2	27	65	11	202	21
December	136	112	248			21	80	99	62	6			61	119	68				70	31	53	10	6	19	52	7	224	24
January	181	102	283			31	79	117	49	7			88	115	80				63	26	54	20	1	22	81	16	251	32
February	253	117	370			26	107	144	80	12	1		129	136	105				93	40	51	21	8	45	97	15	343	27
March	238	131	369			35	83	124	97	28	2		113	128	128				90	38	75	27	3	40	75	21	348	21
May	160	89	249			23	58	97	56	14	1		81	99	69				64	27	49	18	1	27	53	10	236	13
April	266	144	410			23	77	148	112	46	4		104	152	154				104	38	92	26	12	47	66	25	360	30
June	66	46	112			1	23	41	36	10	1		18	56	38				31	7	34	11	1	8	7	13	112	
Sub-Total	1624	905	2529		2	218	639	930	592	137	11		748	981	800				602	245	512	191	44	249	557	129	2337	192
Total	2455	1253	3708		2	218	639	972	879	540	346	112	748	981	937	622	265	155	851	320	908	247	52	374	722	234	3422	286

LEVEL	SEX			AGE									GRADE						Insubordination	Behavior Problem	Class Cut & Truancy	Assault	Extortion – Theft	Smoking	Fighting	Miscellaneous	Handled By	
	M	F	Total	10	11	12	13	14	15	16	17	18+	7	8	9	10	11	12									School	Center
				5	6	7	8	9	10	11	12	13+	1	2	3	4	5	6										
Elementary																												
September	5	1	6						3	2	1					1	2	3	1	3					2		1	5
October	24	2	26		1		3	1	6	6	9		1		3	2	8	12	5	11	5	4			1		2	24
November	28	3	31		2		3	4	6	11	5		2	2	4	4	5	14	4	17	2	5	1		2		13	18
December	18	4	22				2	1	5	8	5	1		1	2		9	10	8	6	1	3		1	3		13	9
January	25	3	28			2	3	5	2	5	9	2		3	3	5	4	13	7	13		4			3	1	8	20
February	23	8	31		1	1	1	2	6	12	7	1	2		1	2	19	7	3	10		3	2		10	3	12	19
March	29	18	47		1	1	1	4	4	11	21	4	2	1	2	3	14	25	9	13		8	1	1	10	5	20	27
April	34	12	46			2		3	10	15	13	3	2		1	5	16	22	6	14	2	9			11	4	27	19
May	45	14	59	1		1	1	3	6	15	23	9	1	2	4	5	15	32	13	27	2	7			10		27	32
June	24	7	31			3		4	3	6	7	8	2	1	3	2	9	14	7	10		7			6	1	23	8
Total	255	72	327	1	5	10	14	27	51	91	100	28	12	10	23	29	101	152	63	124	12	50	4	2	58	14	146	181
Special																												
September			0																									
October	5		5									5						5	3			2					1	4
November	4		4									4						4	2	2								4
December	2		2									2						2		1					1			2
January			0																									
February			0																									
March	2	2	4									4						4	1	2		1					1	3
April	1		1									1						1		1								1
May	2	1	3									3						3		1	1	1					1	2
June			0																									
Total	16	3	19									19						19	6	7	1	4			1		3	16
Grand Total	2726	1328	4054	1	7	228	653	999	930	631	446	159	760	991	960	651	366	326	920	451	921	301	56	376	781	248	3571	483

Statistics compiled by the Cincinnati City School District, Pupil Adjustment Branch, on the basis of suspension notices received by the Clerk-Treasurer of the School District.

Supreme Court, U. S.
FILED
OCT 4 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, ET AL.,
Appellants,

v.

EILEEN LOPEZ, ET AL.,
Appellees.

On Appeal from a Three-Judge
United States District Court
for the Southern District of Ohio,
Eastern Division

REPLY BRIEF FOR APPELLANTS

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Miscellaneous Authorities:

Alfred Alschuler and John V. Shea, *The Discipline Game: Playing Without Losers*, Learning Magazine, (August/September 1974) 14

Dr. James Dobson, *Dare to Discipline*, Tyndale House Publishers (1972) 12, 13

Diane Divoky, *Opting For An Old-Fangled Alternative*, Learning Magazine (February 1974) 14

Ivan Illich, *Deschooling Society*, Harper & Row (1971) 2

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Note, "The Conclusive Presumption Doctrine: Equal Process or Due Protection," 72 Michigan L.Rev. 800 (1974) 7

Leonard G. Ratner, "The Function of the Due Process Clause," 116 U. Pa. L.Rev. 1048 (1968) 6

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REPLY BRIEF FOR APPELLANTS

INTRODUCTION

Appellees and their friends through the argument they present, urge this Court to conclude that the due process clause of the Fourteenth Amendment applies to students in Ohio public schools who are subject to academic discipline in the form of short term suspensions.

The arguments asserted proceed from a foundation which treats and equates education as representing nothing more than an institutionalized process. Presence in a particular school building or in a particular school system assumes an importance equal to or greater than, the actual pursuit of knowledge. Presence in a particular school system or school building represents education.

This preoccupation with education viewed as a caretaker function demonstrates itself most clearly in appellees' assertion that students who have been suspended have a greater chance of contact with the police. [Brief of Appellees, p. 36.]

While historical and judicial support for this argument appears lacking, the argument is important to appellees' conclusion that the issue to be decided by this Court in the present case is no different than the issues which confronted the Court in the welfare, commercial and even criminal law areas.

The present case does not present a situation warranting the adoption of the narrow theory that being part of an institutionalized process means education.[1] Appellees were never deprived of that free choice right to train their minds. Further, they participated in the process and even received the product of the process, a diploma. What this case does involve is the right of a state legislative body to decide, in establishing a system of public education, how the system will operate, the power that will be given principals to manage and control the daily operation of the system, including even the restrictions that will be placed on that power, and the relationship that will exist between those who operate the system and those who are participants. In exercising such legislative power and discretion, the state legislature of Ohio did not act in a manner such as deprived appellees of a right of liberty or property protected by the due process clause when they restricted the power of a principal to summarily suspend to a period of ten calendar days.

---

1. "In modern society where a large number of our values are being re-examined there is no need to conclude that 'education' the pursuit of knowledge, a personal activity means nothing more than being part of an institutionalized process. The pursuit of knowledge should remain a broad concept." Ivan Illich, *Deschooling Society*, Harper & Row (1971) 38-39, 73-104.

ARGUMENT

Several points need to be made with regard to the broad sweeping arguments relating to the application of the due process clause asserted by appellees and their friends. These points or principles relate chiefly to the framework within which this entire question of academic discipline and the due process clause, separated from the involvement of any First Amendment issue, race issue, or unequal application issue must be examined. Serious consideration of these principles, divorced from a parade of fears supports a conclusion that a legislature that passes a statute similar to Section 3313.66 of the Ohio Revised Code does not violate specifically identifiable constitutional interests protected by the due process clause.

THE COMMON SCHOOL SYSTEM HISTORICALLY ESTABLISHED TO PROTECT THE STATE FROM AN UNEDUCATED CITIZENRY CANNOT BE EQUATED WITH MORE RECENT AREAS OF LEGISLATIVE CONCERN.

1. The actual historical framework within which systems of local education arise is overlooked by appellees and their friends. Particularly overlooked is the fact that a system of public education is established by the state for the purpose of furthering the interest of the state, namely, the protection and improvement of the state as a political entity. The primary aim is not the specific benefit of any one individual. *Bissell v. Davison*, 32 A. 348, 349 (1849); *Fogg v. Board of Education*, 82 A. 173, 174-175 (1912); *State, ex rel., Lien v. School Dist. No. 73 of Stillwater County*, 76 P.2d 330, 331 (1938); *Opinion of the Justices*, 233 A.2d 832, 837 (1967); and Arval Morris, *The Constitution and American Education*, West Publishing Company (1974) 113, 204-205.

2. If one gives proper recognition to the historical

premise that systems of local education were created and designed to perform a societal function as opposed to a purely personal function; then it is clear that this Court in a case involving purely the internal operation of the system is not faced with the type of situation presented in *Goldberg v. Kelly*, 397 U.S. 254, 25 L.Ed.2d 287 (1970); *Fuentes v. Shevin*, 407 U.S. 67, 32 L.Ed.2d 556 (1972); or *Sniadach v. Family Finance Corp.*, 395 U.S. 377, 23 L.Ed.2d 349 (1969). Justice Powell's analysis of *Goldberg v. Kelly, supra*, contained in his concurring opinion in *Mitchell v. W. T. Grant Co.*, ___ U.S. ___, 40 L.Ed.2d 406, 424 (1974), wherein that case was placed in the category of cases involving a question of "brutal need" certainly distinguishes the case from the present situation.[2] Certainly this Court is not faced with a situation involving such a threat to life as to present a case of "brutal need." Further, this Court's analysis of welfare benefits as contrasted with other government actions cannot be overlooked, *Goldberg v. Kelly*, 397 U.S. at 262-264. *Fuentes v. Shevin, supra*, and *Sniadach v. Family Finance Corp., supra*, involve questions of pure personal property and relations between consumers and vendors or the assignees of vendors and bear no similarity to the instant situation. In fact, *Sniadach v. Family Finance Corp., supra*, might well be placed in the category of cases such as *Goldberg, supra*, wherein questions of brutal need might arise. Concurring opinion of Justice Powell, *Mitchell v. W. T. Grant Co.*, 40 L.Ed.2d at 425-426, footnote three. The field of commerce and the attendant problems surrounding personal property, contract and the potential affects on life, bear no relationship to the internal operation and management of a state created system of common schools created to protect the state from an uneducated citizenry. The history sur-

2. Equally worthy of note is the analysis found in Justice Powell's concurring opinion in *Arnett v. Kennedy*, ___ U.S. ___, 40 L.Ed.2d 15, 41 (1974).

rounding the evolution and growth of systems of common education, such as the system established in Ohio and the well-established premise that local authorities do possess judgmental decision making power where the question concerns the control and operation of such systems, illustrates the dissimilarity.

3. Unless the historical concept that common school systems are established by the state for essentially its own protection is abandoned, and unless continued recognition of the policy making power possessed by states where the question involves both the operation and control of local systems is to cease, it cannot be said that the state's interest in the day-to-day dispatch of affairs within that system is one less significant than a government employer's interest. A requirement of prior adversary hearings fastened to a principal's duties in conducting the daily affairs within a school system certainly places the principal in an awkward position with respect to the students he must both control and direct and certainly has no less consequence than those present in the relationship existing between federal employer and employee. *Arnett v. Kennedy*, ___ U.S. ___, 40 L.Ed.2d 15, 41 (1974) concurring opinion of Justice Powell.

4. The pattern of legislation in Ohio under which the state established its system of public education is typical of legislation creating a system of public common education and that pattern of legislation places wide discretion in boards of education in the government of their employees and students who participate in the system. Section 3313.20, Ohio Revised Code, and Section 3313.47, Ohio Revised Code. *Greco v. Roper*, 145 Ohio St. 243, 61 N.E.2d 307 (1945); *Holroyd v. Eibling*, 90 Ohio Law Abs. 78, 116 Ohio App. 440 (1961). Section 3313.66, Ohio Revised Code, reflects a policy decision on the part of the Ohio Legislature to the effect that the broad discretion given to principals and administrators is to be lim-

ited, in that a suspension given to a student cannot last longer than ten days.

THE QUESTION OF THE LENGTH OF A SUSPENSION AND PROCEDURES NECESSARY TO IMPLEMENT THAT SUSPENSION PRESENTS A POLICY QUESTION TO BE DETERMINED BY LEGISLATIVE JUDGMENT.

5. In terms of the construction and application of the due process clause, what is really involved in this case is a question of conduct regulating policy; the power of teachers and principals to regulate and control conduct in the classroom and in the school of a state created system of common schools. Viewed in that sense, questions of conduct regulation involve issues formerly considered under substantive due process, as opposed to pure procedural due process. Leonard G. Ratner, "The Function of the Due Process Clause," 116 U. Pa. L.Rev. 1048, 1050-1053 (1968). Absent questions relating to the First Amendment, discrimination, or decisions based on race, religion or sex, no provision of the Constitution proscribes the state's authority to regulate conduct within its own facility. Ratner, *supra*, 116 U. Pa. L.Rev. 1048, 1060-1063 (1968). The area of the establishment of a common school system, including making provision for the control of teachers and students, in the absence of the implication of a fundamental specifically identified interest, should remain viewed as one involving considerations over which this Court will not substitute its wisdom for that of the legislative body. *Linwood v. Board of Education of Peoria*, 463 F.2d 763, 768-769, *cert. denied*, 409 U.S. 1027 (1972); *Ferguson v. Skrupa*, 372 U.S. 726, 731, 10 L.Ed.2d 93, 97-98 (1963); *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*, ___ U.S. ___, 38 L.Ed.2d 379, 386-387 (1963); *Healey v. James*, 408 U.S. 169, 203, 33 L.Ed.2d 266, 292 (1972),

concurring opinion of Justice Rehnquist; Ratner, *supra*, 116 U. Pa. L.Rev. 1048, 1080 (1968) and Note, "The Conclusive Presumption Doctrine: Equal Process or Due Protection," 72 Michigan L.Rev. 800 (1974). Particularly is this analysis compelling in the area of suspensions. The issue surrounding the establishment of a suspension procedure including how long a suspension may be issued without a hearing is a legislative question.

6. Unless the principle is to be adopted that the due process clause applies to every conceivable situation, a position specifically disavowed by this Court in *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895, 6 L.Ed.2d 1230 (1961), then it would appear, at least in the area of suspensions in common school systems, that this Court is faced with an area of concern open to the exercise of legislative judgment. That being the case, the question of how long a suspension may be handed out without prior hearing poses a question of substantive rather than procedural due process. *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*, 38 L.Ed.2d at 386-387; *Ferguson v. Skrupa, supra; Linwood v. Board of Education of Peoria*, 463 F.2d at 768-769; *Arnett v. Kennedy*, ___ U.S. ___, 40 L.Ed.2d 15, 32-33 (1974); and Note, "The Conclusive Presumption Doctrine: Equal Process or Due Protection," 72 Michigan L.Rev. 800, 816-836 (1974). Certainly, the state in the creation and operation of its own system of common schools can decide within the framework of its legislative power whether or not a principal should have to afford a prior hearing before suspending a student for ten calendar days. If a state may validly decide who shall engage in the business of debt adjusting, then it certainly possesses the legislative power to decide in the exercise of its wisdom both what power a principal shall have to manage and control a school and the manner in which that power

should be restricted.[3] *Ferguson v. Skrupa*, 372 U.S. at 731, and *St. Ann v. Palisi*, 495 F.2d 423, 429-434 (1974) [dissenting opinion of Judge Roney].

7. Such cases as *Cleveland Board of Education v. LaFleur*, ___ U.S. ___, 39 L.Ed.2d 52 69-70 (1974) concurring opinion of Justice Powell; *Karr v. Schmidt*, 401 U.S. 1201, 27 L.Ed.2d 797 (1971), dissenting opinion of Justice Black; *Tinker v. Des Moines Community School District*, 393 U.S. 503, 526, 21 L.Ed.2d 731, 749 (1968), dissenting opinion of Justice Harlan and concurring opinion of Justice Stuart; *Epperson v. Arkansas*, 393 U.S. 97, 21 L.Ed.2d 228 (1968); *Waugh v. Board of Trustees of the University of Mississippi*, 237 U.S. 589, 59 L.Ed. 1131, 1136 (1915); *Wright v. Council of City of Emporia*, 407 U.S. 451, 478, 33 L.Ed.2d 51, 70 (1972) dissenting opinion of Chief Justice Burger;[4] and *Milliken v. Bradley*, ___ U.S. ___, 41 L.Ed.2d 1069 (1954)[5] and the expres-

3. The comment of Justice Holmes in *Truax v. Corrigan*, 257 U.S. 312, 344, 66 L.Ed. 254, 268 (1921) is worthy of observation in this case: "I must add one general consideration. There is nothing that I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several states, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect."

4. The pronouncements to be found in these decisions represent a clear pattern of recognition of the fact that in the area of local common schools states do possess discretionary authority to run their local schools as their judgment dictates. The weight to be given to the recognition of such authority is similar to the weight that was given the long recognition of policy in *Galvan v. Press*, 347 U.S. 522, 530-531, 98 L.Ed. 911, 921-922 (1953). Section 3313.66 of the Ohio Revised Code does not amount to an abuse of that discretionary authority.

5. In *Milliken v. Bradley*, ___ U.S. ___, 41 L.Ed.2d 1069, 1089, that recognition is stated clearly in the following manner: "No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process. * * * Thus, in *San Antonio School District v. Rodriguez*, 411 U.S. 1, 50, 36 L.Ed.2d 16, 93 S.Ct. 1278, we observed that local control over the educational process affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages experimentation, innovation and a healthy competition for educational excellence!" Academic discipline is very much a part of that process. Involved in the structuring of school programs and relationships is the question of academic discipline and the form it will take. Academic discipline and the educational process are not mutually exclusive. *Laucher v. Simpson*, 28 Ohio App.2d 195, 198, 276 N.E.2d 261 (1971).

sions contained therein recognize the broad authority of state legislatures in the area of operating and controlling local schools according to their best judgments and really represent pronouncements similar to that contained in *Ferguson v. Skrupa*, 372 U.S. 726, 10 L.Ed.2d 93 (1963) all to the effect that with respect to common schools established by the state, absent infringement of a specifically identified constitutional interest, there is an area within which legislative judgment is free to operate in providing conduct regulating legislation, an area into which this Court will not invade and substitute its judgment. Section 3313.66 of the Ohio Revised Code is a statute which falls within the legislative area where the state is free to decide for itself not only what legislation is needed to control the internal affairs of its schools, but the kind of restrictions that should be placed on that authority. The District Court in this case and other Federal Courts past and present in addressing the question of suspension [Brief of Children's Defense Fund, pp. 26-27] have engaged in a substantive due process substitution of their judgment for that of the legislature, the body charged both with providing for the internal management of local schools and with establishing and defining the authority of local teachers and administrators. This Court has rejected such an approach in reviewing legislation to determine if it conforms with the Constitution. *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*, 38 L.Ed.2d at 386-389.

THE PASSAGE OF A COMPULSORY EDUCATION LAW DOES NOT SERVE TO CREATE A PROPERTY RIGHT FOR THOSE WHO ATTEND THE STATE'S SYSTEM OF COMMON SCHOOLS.

8. The state has not created a right of property within the meaning of *Board of Regents v. Roth*, 408 U.S. 564, 33 L.Ed.2d 548 (1972) when it established a common school system for its protection. Examination of the sys-

tem of common schools established in Ohio does not disclose that the legislature intended to confer upon students a status such as would make the occupation of a school building a protected property right. Chapter 3321 of the Revised Code projects the public policy of the state common schools. *State v. Gans*, 168 Ohio St. 174, 5 Ohio Ops.2d 472, 476 (1958). Article VI, §2 of the Ohio Constitution directs the legislature to use tax funds for the provision of a system of common schools. Article VI, §3 of the Ohio Constitution directs the legislature to provide for the organization, administration and control of the common school system called for under §2. The legislature in §3313.47 of the Ohio Revised Code placed the management and control of the common schools thus created in the respective local school boards. The legislature also in §3313.20 gave each board of education general power to prescribe rules and regulations "for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises." Consideration of these constitutional provisions and statutes passed in furtherance of a common school system does not support a conclusion that the legislature intended to confer upon students a status akin to a property right. Neither §3313.20 of the Revised Code which confers a broad grant of power nor §3313.66 of the Revised Code which places a restriction on the authority of the principal requires that a student be granted a hearing prior to the administration of academic discipline. The claimed existence of a property right should be compared with the analysis of a property right in *Jafree v. Scott*, 372 F.Supp. 264, 270-272 (1974); *Adams v. Walker*, 492 F.2d 1003, 1006 (1974) and *Shirck v. Thomas*, 486 F.2d 691, 692 (1973). A statutory entitlement is not to be found with the statutory

scheme enacted by Ohio in formulating its common school system.[6]

The object of Ohio's compulsory education law may be expressed in terms of legislation whose objective is the enforcement of the parents' natural obligation to provide an education for their young. In other words, the compulsory education law places a duty on the parents to choose either public or private schools. Thus, in enforcing this natural obligation the state protects itself from a uninformed citizenry. *People v. Levisen*, 90 N.E.2d 213, 215 (1950) and *State, ex rel., Chafin v. Glick*, 172 Ohio St. 249 (1961). In §§3313.67 and 3313.671 of the Ohio Revised Code certain vaccinations and immunizations are made compulsory; however, one would not seriously argue that they confer a property right. Further, a similar compulsory attendance and participation aspect is present in military service under the draft; however, no one would argue that compulsory attendance or participation resulting from the draft creates a property right.

A property interest arising by virtue of state law was not involved in this case. *Perry v. Sindermann*, 408 U.S. 593, 602, 33 L.Ed.2d 570, 580 (1972) footnote seven.

THE RELATIONSHIP INVOLVED, OBJECTIVES TO BE ATTAINED AND FORCES AT WORK IN A COMMON SCHOOL SYSTEM ARE DISSIMILAR FROM ANY TYPICAL AREA OF ADULT INVOLVEMENT.

9. Appellees and their friends evince an almost wooden preoccupation with the need for a hearing within the framework of academic discipline. That preoccupation does not permit them to recognize the relationship

6. Compare this case with the careful analysis of "property" and the evolution of "property rights" to be found in *Cannady v. Person County Board of Education*, 375 F.Supp. 680, 700-701 (1974).

involved and at work in administering a common school system. Their view of the area can easily be characterized as one which attempts to reduce all situations to one where the prime objectives are akin to those at work in a determination of criminal responsibility. [Brief of American Civil Liberties Union, p. 6, footnote 5.] Appellants do not have to resort to the doctrine of *in loco parentis* to state with certainty that the parties involved, the relationship that exists and must exist between those parties, and the objectives to be attained in the operation and administration of a common school system cannot be resolved into a convenient question of accusation and the assessment of culpability.

10. Appellees and their friends in discussing what could be categorized as a chamber of horrors of problems experienced by children, completely miss the point and the frame of reference within which conduct within the common school classroom and school buildings must be viewed. Lost in such an approach is the relationship that exists between principal, teacher and student, with the student being a person possessed of varying degrees of maturity or no maturity at all. The problems to be confronted in a common school classroom or school building do not reduce themselves to a simple question of creating a fault-finding process. "Discipline in a school classroom or building is not very different from discipline at home." Dr. James Dobson, *Dare to Discipline*, Tyndale House Publishers (1972) 27. The chief issues that must be faced, in a school setting today, in order to promote an atmosphere in which education (i.e., the choice to pursue and acquire knowledge) can be fostered, relate to creating between principal, teacher and student respect, a sense of responsibility, an awareness of the boundaries of acceptable behavior and an element of self discipline.

Engrafting upon the present system what is tantamount to an adversary relationship in which the authority of the teacher or principal is made subject to a fault-finding process will not promote these objectives. Academic discipline in the present system of common schools represents an attempt to reflect and foster these principles. It is not and should not be associated with a process which is very much akin to the fault-finding process at work in criminal law. Punishment or discipline in the school setting is not imposed for punishment's sake and should not be viewed in that light. Appellees and their friends do not and cannot point to any system wherein education, as defined by appellants and this Court, has been fostered by turning academic discipline into an adversary relationship. Contrary to appellees and their friends' assertions relating to the improper use of discipline, the authorities are not in agreement concerning the use of discipline within today's common school system. As pointed out by Dr. Dobson:

> "The degree of student control exercised by school authorities has never been so minimal as it is today in America. Some concerned parents are refusing to send their children to school until safety can be guaranteed. We simply must restore a greater semblance of order in our junior and senior high schools, yet the trend at this time is toward more and more student autonomy. Educational discipline is still on the wane, as is reflected in the elimination of traditional rules and regulations." Dobson, *Dare to Discipline, supra*, 93.

Questions of child rearing both at home and within the schoolhouse which must include and involve academic discipline cannot be equated with problems surrounding the grant of welfare benefits, the grant of a

drivers license, the seizure of admitted personal property or with the myriad of constitutional protections surrounding criminal law. Such an approach treats a very complex area of personal relationships in a far too simplistic manner. What appellees and their friends ultimately seek is full autonomy for children of primary and secondary school age. Such an approach involves critical questions of policy including questions relating to whether or not the system of common schools should be retained. Academic discipline does not involve a denial of education as appellants have defined the term, if this Court still adheres to the concept expressed in *Epperson v. Arkansas*, 393 U.S. 97, 21 L.Ed.2d 228, 234 (1968) to the effect:

> "By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values." [7]

The conclusion does follow that §3313.66 of the Ohio Revised Code does not directly and sharply implicate basic constitutional values, and the question of the kind of academic discipline that will prevail in today's common school system is a question to be resolved by parents, teachers, administrators and the various legislative bodies exercising their own best judgment. Parents are beginning to respond to that question of policy regarding the kind of classroom structure and academic discipline they want. Diane Divoky, *Opting For An Old-Fangled Alternative*, Learning Magazine (February, 1974) 13.[8]

7. The comments of Justice Black in *Karr v. Schmidt*, 401 U.S. 1201, 1202, 27 L.Ed.2d 797 (1971) relating to the power of the states absent the involvement of a specifically identified constitutional interest buttress this recognition of local decision making power.

11. The concept of education which is portrayed in the briefs submitted by appellees and their friends is one which reduces a very complex pursuit to a question of class attendance and booklearning. Education, the pursuit of knowledge and corresponding personality growth, involves much more. Particularly in this conclusion true in the primary and secondary school area. Concepts of citizenship, respect for authority, self discipline and responsibility are very much a part of the fabric of the pursuit of knowledge. It is a mistake to equate academic discipline with the assessment of criminal responsibility. It is an even greater mistake to insist, in substance, that a teacher or prncipal should be more concerned with the assessment of cupability than with the personality entrusted to his care. [Brief of the Children's Defense Fund, p. 11.]

CONCLUSION

In the present case, where the question presented is a narrow one, it does no violence to the distinction between the concepts of equal protection of the law and due process to give recognition to this Court's rationale in *San Antonio School District v. Rodriguez*, 411 U.S. 1, 29, 35-37; 36 L.Ed.2d 16 (1973). Certainly this Court in *Roe v. Wade*, 410 U.S. 113, 35 L.Ed.2d 147 (1973) did not maintain a rigid demarcation between equal protection and due process. *Roe v. Wade*, 410 U.S. at 173, dissenting opinion of Justice Rehnquist. The comprehensive inquiry of this Court in *Rodriguez*, 411 U.S. at 29-37, relating to education is at least helpful in the search for an interest protected by the Constitution. *Rodriguez*, 411 U.S. at 62, concurring opinion of Justice Stuart. That

8. Exploration of the social relationship that should exist between principal, teacher and student is also taking place. The establishment of an adversary relationship is not an alternative being considered. Alfred Alschuler and John V. Shea, *The Discipline Game: Playing Without Losers*, Learning Magazine (August/September 1974) 80, 86.

rationale demonstrates that the statute under review, §3313.66 of the Ohio Revised Code, impinges upon no right of liberty or property secured by the Constitution.

The record of this cause does not demonstrate that appellees' broad liberty recognized in *Pierce v. Society of Sisters of Holy Names*, 268 U.S. 510, 69 L.Ed. 1070 (1925) and *Meyer v. Nebraska*, 262 U.S. 390, 67 L.Ed. 1042 (1923) was ever sharply implicated. The record of this cause does illustrate the problems that arise surrounding the internal operation and management of a system of common schools, including the judgmental decisions that must be made. It was within the discretionary power possessed by the Ohio legislature, acting to restrict the power previously granted to principals, to equate a suspension of ten days with other forms of minor academic discipline not requiring a hearing, while at the same time requiring a hearing where the academic discipline imposed is expulsion. *Linwood v. Board of Education of Peoria*, 463 F.2d at 769 (1972).

Appellees did not prove that §3313.66 of the Ohio Revised Code, the conduct of the involved principals or the rules and regulations of any particular school were motivated by other than legitimate school concerns. *Tinker v. Des Moines Community School District*, 393 U.S. 503, 526; 21 L.Ed.2d 731, 749 (1968) dissenting opinion of Justice Harlan.

The judgment of the District Court should be reversed.

Respectfully submitted,

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